COURT DRAFT 10/28/19

STATE OF MAINE
SUPREME JUDICIAL COURT
PROPOSED AMENDMENTS TO THE
MAINE RULES OF CIVIL PROCEDURE

1. Rule 3 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 3. COMMENCEMENT OF ACTION

Except as otherwise provided in these rules, a civil action is commenced in one of two ways:

(a) by the service of a summons, complaint, civil case information sheet, and notice regarding Electronic Service, or

(b) by initially filing a complaint and the civil case information sheet with the court.

When method (a) is used, the complaint, civil case information sheet, and return of service must be filed with the court within 21 days after completion of service of the summons, complaint, civil case information sheet, and notice regarding Electronic Service. When method (b) is used, the return of service of the summons, complaint, civil case information sheet, and notice regarding Electronic Service shall be filed with the court within 91 days after the initial filing. If the complaint or the return of service is not timely filed, the action may be dismissed on motion and notice, and in such case the court may, in its discretion, if it shall be of the opinion that the action was vexatiously commenced, tax a reasonable attorney fee as costs in favor of the defendant, to be recovered of the plaintiff or the plaintiff's attorney.

Advisory Note – _____ 2019

Rule 3 is amended to make the subdivision designations consistent with the rest of the rules, to require service of the civil case information sheet described in Rule 5(h), to require the return of service to be included with the initial filing in cases that are commenced by service, and to change deadlines for filing the necessary documents with the court from 20 to 21 days after

service if commenced by service and from 90 to 91 days after filing if commenced by filing to use increments of 7.

2. Rule 4 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 4. PROCESS

(a) Summons: Form. The summons shall bear the signature or facsimile signature of the clerk; be under the seal of the court; contain the name of the court and the names of the parties; be directed to the defendant; state the name and address, including email address, of the plaintiff's attorney and the time within which these rules require the defendant to appear and defend; and shall notify the defendant that in case of failure to do so judgment by default may be rendered against the defendant for the relief demanded in the complaint.

(b) Same: Issuance. The summons may be procured in blank from the clerk and shall be filled out by the plaintiff's attorney as provided in subdivision (a) of this rule. The plaintiff's attorney shall deliver to the person who is to make service the original summons upon which to make return of service and a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service for service upon the defendant. The notice regarding Electronic Service shall instruct parties who are represented by counsel that they are subject to the requirements of Electronic Service under Rule 5; shall notify unrepresented parties of their right to opt in to Electronic Service, including the technological requirements to opt in; and shall provide them with instructions for opting in.

(c) Service. Service of the summons, complaint, civil case information sheet, and notice regarding Electronic Service may be made as follows:

(1) By mailing a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment form and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service under this paragraph is received by the sender within 21 days after the date of mailing, service of the summons, complaint, civil case information sheet, and notice regarding Electronic Service shall be made under paragraph (2) or (3) of this subdivision.

(2) By a sheriff or a deputy within the sheriff's county, or other person authorized by law, or by some person specially appointed by the court

for that purpose. Special appointments to serve process shall be made freely when substantial savings in travel fees will result.

(3) By any other method permitted or required by this rule or by statute.

(d) Summons: Personal Service. The summons, complaint, civil case information sheet, and notice regarding Electronic Service shall be served together. Personal service within the state shall be made as follows:

(1) Upon an individual other than a minor or an incompetent person, by delivering a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given. The court, on motion, upon a showing that service as prescribed above cannot be made with due diligence, may order service to be made pursuant to subdivision (g) of this rule.

(2) Upon a minor, by delivering a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service personally (A) to the minor and (B) also to the minor's guardian if the minor has one within the state, known to the plaintiff, and if not, then to the minor's father or mother or other person having the minor's care or control, or with whom the minor resides, or if service cannot be made upon any of them, then as provided by order of the court.

(3) Upon an incompetent person, by delivering a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service personally (A) to the guardian of the incompetent person or a competent adult member of the incompetent person's family with whom the incompetent person resides, or if the incompetent person is living in an institution, then to the director or chief executive officer of the institution, or if service cannot be made upon any of them, then as provided by order of the

court and (B) unless the court otherwise orders, also to the incompetent person.

(4) Upon a county, by delivering a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service to one of the county commissioners or their clerk or the county treasurer.

(5) Upon a town, by delivering a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service to the clerk or one of the selectmen or assessors.

(6) Upon a city, by delivering a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service to the clerk, treasurer, or manager.

(7) Upon the United States, by delivering a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service to the United States attorney for the district of Maine or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the United States District Court for the district of Maine and by sending a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service by registered or certified mail to such officer or agency provided that any further notice required by statute or regulation shall also be given.

Upon an officer or agency of the United States, by serving the United States and by delivering a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service to such officer or agency, provided that any further notice required by statute or regulation shall also be given. If the agency is a corporation the copy shall be delivered as provided in paragraph (8) or (9) of this subdivision of this rule.

Upon any other public corporation, by delivering a copy of the summons, complaint, civil case information sheet, and notice regarding

Electronic Service, to any officer, director, or manager thereof and upon any public body, agency or authority by delivering a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service to any member thereof.

(8) Upon a domestic private corporation (A) by delivering a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service to any officer, director or general agent; or, if no such officer or agent be found, to any person in the actual employment of the corporation; or, if no such person be found, then pursuant to subdivision (g) of this rule, provided that the plaintiff's attorney shall also send a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service to the corporation by registered or certified mail, addressed to the corporation's principal office as reported on its latest annual return; or (B) by delivering a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service to any agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, provided that any further notice required by the statute shall also be given.

(9) Upon a corporation established under the laws of any other state or country (A) by delivering a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service to any officer, director or agent, or by leaving such copies at an office or place of business of the corporation within the state; or (B) by delivering a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service to any agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, provided that any further notice required by the statute shall also be given.

(10) Upon a partnership subject to suit in the partnership name in any action, and upon all partners whether within or without the state in any action on a claim arising out of partnership business, (A) by delivering a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service to any general partner or any managing or general agent of the partnership, or by leaving such copies at an office or place of business of the partnership within the state; or (B) by delivering a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service to any agent, attorney in fact, or other person authorized by appointment or by

statute to receive or accept service on behalf of the partnership, provided that any further notice required by the statute shall also be given.

(11) Upon the State of Maine by delivering a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service to the Attorney General of the State of Maine or one of the Attorney General's deputies, either (A) personally or (B) by registered or certified mail, return receipt requested; and in any action attacking the validity of an order of an officer or agency of the State of Maine not made a party, by also sending a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service by ordinary mail to such officer or agency. The provisions of Rule 4(f) relating to completion of service by mail shall here apply as appropriate.

(12) Upon an officer or agency of the State of Maine by the method prescribed by either paragraph (1) or (7) of this subdivision as appropriate, and by also sending a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service by ordinary mail to the Attorney General of the State of Maine.

(13) Upon all trustees of an express trust, whether within or without the state, in any action on a claim for relief against the trust, except an action by a beneficiary in that capacity, (A) by delivering a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service to any trustee, or by leaving such copies at an office or place of business of the trust within the state; or (B) by delivering a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service to any agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the trust, provided that any further notice required by the statute shall also be given.

(14) Upon another state of the United States, by the method prescribed by the law of that state for service of process upon it.

(e) Personal Service Outside State. A person who is subject to the jurisdiction of the courts of the state may be served with the summons, complaint, civil case information sheet, and notice regarding Electronic Service outside the state, in the same manner as if such service were made within the state, by any person authorized to serve civil process by the laws of the place of

service or by a person specially appointed to serve it. An affidavit of the person making service shall be filed with the court stating the time, manner, and place of service. Such service has the same force and effect as personal service within the state.

(f) Service by Mail in Certain Actions.

(1) *Outside State.* Where service cannot, with due diligence, be made personally within the state, service of the summons, complaint, civil case information sheet, and notice regarding Electronic Service may be made upon a person who is subject to the jurisdiction of the courts of the state by delivery to that person outside the state by registered or certified mail, with restricted delivery and return receipt requested, in the following cases: where the pleading demands a judgment that the person to be served be excluded from a vested or contingent interest in or lien upon specific real or personal property within the state, or that such an interest or lien in favor of either party be enforced, regulated, defined or limited, or otherwise affecting the title to any property.

(2) *Family Division Actions.* Service of the summons, complaint, and notice regarding Electronic Service or a post-judgment motion may be made in an action pursuant to Chapter XIII of these rules upon a person who is subject to the jurisdiction of the courts of the state by delivery to that person, whether in or outside the state, by registered or certified mail, with restricted delivery and return receipt requested.

(3) *Service Completion.* Service by registered or certified mail shall be complete when the registered or certified mail is delivered and the return receipt signed or when acceptance is refused, provided that the plaintiff shall file with the court either the return receipt or, if acceptance was refused, an affidavit that upon notice of such refusal a copy of the summons, complaint, civil case information sheet, and notice regarding Electronic Service was sent to the defendant by ordinary mail.

(g) Service by Alternate Means; Motion Required.

(1) *When Service May Be Made.* The court, on motion upon a showing that service cannot with due diligence be made by another prescribed method, shall order service (A) to be made by leaving a copy of the order

authorizing service by alternate means, the summons, complaint, civil case information sheet, and notice regarding Electronic Service at the defendant's dwelling house or usual place of abode; or (B) by publication unless a statute provides another method of notice; or (C) to be made electronically or by any other means not prohibited by law.

(2) *Requirements of Motion.* Any such motion shall be supported by both a draft, proposed order to provide the requested service by alternate means, and an affidavit showing that:

(A) The moving party has demonstrated due diligence in attempting to obtain personal service of process in a manner otherwise prescribed by Rule 4 or by applicable statute;

(B) The identity and/or physical location of the person to be served cannot reasonably be ascertained, or is ascertainable but it appears the person is evading process; and

(C) The requested method and manner of service is reasonably calculated to provide actual notice of the pendency of the action to the party to be served and is the most practical manner of effecting notice of the suit.

(3) *Contents of Order.* An order for service by alternate means shall include (A) a brief statement of the object of the action; (B) if the action may affect any property or credits of the defendant described in subdivision (f) of this rule, a description of any such property or credits; (C) the substance of the summons prescribed by subdivision (a) of this rule; and (D) a finding by the court that the party seeking service by alternate means has met the requirements in subdivision (g)(1)(A)-(C) of this rule. If the order is one allowing service by publication pursuant to subsection (g)(1)(B), it shall also direct its publication once a week for 3 successive weeks in a designated newspaper of general circulation in the county or municipality and state most reasonably calculated to provide actual notice of the pendency of the action to the party to be served; and the order shall also direct the mailing to the defendant, if the defendant's address is known, of a copy of the order as published. If the order is one allowing service by electronic or other alternate means pursuant to subsection (g)(1)(C), it may include directives about

adequate safeguards to be employed to assure that service can be authenticated and will be received intact, with all relevant documents and information.

(4) *Time of Publication or Delivery; When Service Complete.* When service is made by publication pursuant to subsection (g)(1)(B), the first publication of the summons shall be made within 21 days after the order is granted. Service by alternate means hereunder is complete on the twenty-first day after the first service or as provided in the court's order. The plaintiff shall file with the court an affidavit demonstrating that publication or compliance with the court's order has occurred.

(h) Return of Service. The person serving the process shall make proof of service thereof on the original process or a paper attached thereto for that purpose, and shall forthwith return it to the plaintiff's attorney. The plaintiff's attorney shall, within the time during which the person served must respond to the process, file the proof of service with the court. If service is made under paragraph (c)(1) of this rule, return shall be made by the plaintiff's attorney filing with the court the acknowledgment received pursuant to that paragraph. The attorney's filing of such proof of service with the court shall constitute a representation by the attorney, subject to the obligations of Rule 11, that the copy of the complaint mailed to the person served or delivered to the officer for service was a true copy. If service is made by a person other than a sheriff or the sheriff's deputy or another person authorized by law, that person shall make proof thereof by affidavit. The officer or other person serving the process shall endorse the date of service upon the copy left with the defendant or other person. Failure to endorse the date of service shall not affect the validity of service.

(i) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(j) Alternative Provisions for Service in a Foreign Country.

(1) *Manner.* When service is to be effected upon a party in a foreign country, it is also sufficient if service of the summons, complaint, civil case information sheet, and notice regarding Electronic Service is made: (A) in the manner prescribed by the law of the foreign country for service in that country

in an action in any of its courts of general jurisdiction; or (B) as directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or (C) upon an individual, by delivery to the individual personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (D) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or (E) as directed by order of the court. Service under (C) or (E) above may be made by any person who is not a party and is not less than 18 years of age or who is designated by order of the court or by the foreign court. On request, the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service.

(2) *Return.* Proof of service may be made as prescribed by subdivision (h) of this rule, or by the law of the foreign country, or by order of the court. When service is made pursuant to subparagraph (1)(D) of this subdivision, proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

Advisory Note – _____ 2019

Rule 4 is amended to make the subdivision designations consistent with the rest of the rules, to include references to the civil case information sheet described in Rule 5(h), to change deadlines to use 7-day increments, and to make stylistic changes that do not affect the substance of the rule.

3. Rule 4A of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 4A. ATTACHMENT

. . . .

(c) Same: Service. The writ of attachment may be procured in blank from the clerk and shall be filled out by the plaintiff's attorney as provided in subdivision (b) of this rule. The writ of attachment shall be served by a sheriff or a deputy within the sheriff's county. The plaintiff's attorney shall deliver to the officer making the attachment the original writ of attachment upon which to make return and a copy thereof.

No property may be attached unless such attachment for a specified amount is approved by order of the court. Except as provided in subdivision (g) of this rule, the order of approval may be entered only after notice to the defendant and hearing and upon a finding by the court that it is more likely than not that the plaintiff will recover judgment, including interest and costs, in an amount equal to or greater than the aggregate sum of the attachment and any liability insurance, bond, or other security, and any property or credits attached by other writ of attachment or by trustee process shown by the defendant to be available to satisfy the judgment.

An attachment of property shall be sought by filing with the complaint a motion for approval of the attachment. The motion shall be supported by affidavit or affidavits meeting the requirements set forth in subdivision (i) of this rule. Except as provided in subdivision (g) of this rule, the motion and affidavit or affidavits shall be served upon the defendant in the manner provided by Rule 4 at the same time the summons and complaint are served upon that defendant. In the case of an attachment approved ex parte as provided in subdivision (g) of this rule, the defendant shall also be served with a copy of the writ of attachment with the officer's endorsement thereon of the date or dates of execution of the attachment or, if attachment has been perfected by filing under 14 M.R.S. § 4154, with a copy of the order of approval with the acknowledgment of the officer receiving the filing endorsed thereon.

A defendant opposing a motion for approval of attachment shall file material in opposition as required by Rule 7(c). If the defendant is deemed to

have waived all objection to the motion as provided in Rule 7(c) for failure to file opposition material within the time therein provided or as extended, the court shall, without hearing, upon a finding that the plaintiff is entitled to an attachment under the terms of this subdivision (c), enter an order of approval of attachment in an appropriate amount.

Any attachment shall be made within 28 days after the order approving the writ of attachment. When attachments are made subsequent to service of the summons and complaint upon the defendant, a copy of the writ of attachment with the officer's endorsement thereon of the date or dates of the attachments shall be promptly served upon the defendant in the manner provided by Rule 5. When an attachment made subsequent to the service of the summons and complaint has been perfected by filing under 14 M.R.S. § 4154, a copy of the order of approval, with the acknowledgment of the officer receiving the filing endorsed thereon, shall be promptly served upon the defendant in the same manner.

Advisory Note – _____ 2019

Subdivision (c) of Rule 4A is amended to change a deadline to use a 7-day increment and to update statutory citations to reference the M.R.S. instead of the M.R.S.A. In the third paragraph of subdivision (c), a notice of hearing is no longer to be included with service of the motion and affidavit or affidavits because the court now sends the notice of hearing.

4. Rule 4B of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 4B. TRUSTEE PROCESS

. . . .

(c) Same: Service. The trustee summons may be procured in blank from the clerk and shall be filled out by the plaintiff's attorney as provided in subdivision (b) of this rule. The trustee summons shall be served by a sheriff or a deputy within the sheriff's county. The plaintiff's attorney shall deliver to the officer making service the original trustee summons upon which to make return of service and a copy thereof for service upon the trustee. The trustee summons shall be served in like manner and with the same effect as other process.

No trustee summons may be served unless attachment on trustee process for a specified amount has been approved by order of the court. Except as provided in subdivision (i) of this rule, the order of approval may be entered only after notice to the defendant and hearing and upon a finding by the court that it is more likely than not that the plaintiff will recover judgment, including interest and costs, in an aggregate sum equal to or greater than the amount of the trustee process and any insurance, bond, or other security, and any property or credits attached by writ of attachment or by other trustee process shown by the defendant to be available to satisfy the judgment.

Trustee process shall be sought by filing with the complaint a motion for approval of attachment on trustee process. The motion shall be supported by affidavit or affidavits meeting the requirements set forth in Rule 4A(i). Except as provided in subdivision (i) of this rule, the motion and affidavit or affidavits shall be served upon the defendant in the manner prescribed in Rule 4 at the same time the summons and complaint are served upon the defendant.

A defendant opposing a motion for approval of attachment on trustee process shall file material in opposition as required by Rule 7(c). If the defendant is deemed to have waived all objection to the motion as provided in Rule 7(c) for failure to file opposition material within the time therein provided or as extended, the court shall, without hearing, upon a finding that the plaintiff

is entitled to an attachment under the terms of this subdivision (c), enter an order of approval of attachment in an appropriate amount.

Any trustee process shall be served within 28 days after the date of the order approving the attachment. Promptly after the service of the trustee summons upon the trustee or trustees, a copy of the trustee summons with the officer's endorsement thereon of the date or dates of service shall be served upon the defendant in the manner provided in either Rule 4 or Rule 5.

. . . .

(e) Disclosure by Trustee; Subsequent Proceedings. A trustee shall serve that trustee's disclosure under oath within 21 days after the service of the trustee summons upon that trustee, unless the court otherwise directs. The proceedings after service of the trustee's disclosure shall be as provided by law. When a trustee reports for examination, notice thereof shall be served upon the attorney for the plaintiff, and upon motion the court shall fix a time for the disclosure to be made. Before the disclosure is presented to the court for adjudication, there shall be noted upon the back thereof the name of the attorney for the plaintiff, the name of the trustee with the date of the service of the summons upon that trustee, and the docket number of the action.

Advisory Note – _____ 2019

Subdivisions (c) and (e) of Rule 4B are amended to change deadlines to use 7-day increments. In the third paragraph of subdivision (c), a notice of hearing is no longer to be included with service of the motion and affidavit or affidavits because the court now sends the notice of hearing. In subdivision (e), the word "noted" is substituted for "minuted" to enhance clarity.

5. Rule 5 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 5. SERVICE, FILING, AND FORM OF PLEADINGS AND OTHER PAPERS

(a) Service: When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, notice of change of attorneys, pretrial memorandum, demand, offer of judgment, designation of record and statement of points on appeal, and similar paper shall be served upon each of the parties no later than the date on which the paper is filed with the court, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(b) Same: How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party personally is ordered by the court. When an attorney has filed a limited appearance under Rule 11(b), service upon the attorney is not required. Service upon an attorney who has ceased to represent a party is a sufficient compliance with this subdivision until written notice of change of attorneys has been served upon the other parties. Except as otherwise provided in these rules, service of the documents described in subdivision (a) upon a party who is represented by an attorney or an unrepresented party who has opted in to Electronic Service shall be made

(1) by delivering a copy to the attorney or to the party; or

(2) by Electronic Service to the last known electronic mail address provided to the court or, if no electronic mail address is known, mailing it to the last known regular mail address, or, if neither is known, by leaving it with the clerk of the court.

If Electronic Service to the last known electronic mail address is returned as undeliverable, or the sender otherwise learns that it was not successfully

delivered, service must then be made by regular mail. Service shall be complete upon the attempted Electronic Service for purposes of the sender meeting any time period.

Service of the documents described in subdivision (a) upon an unrepresented party who has not opted in to Electronic Service or service of documents excluded from Electronic Service below shall be made by mailing them to the last known regular mail address of the party, or, if no mail address is known, by leaving them with the clerk of the court.

"Electronic Service" means the electronic transmission of a pleading or document. Unless otherwise approved by the court, pleadings and other documents being transmitted electronically shall be sent or submitted as an attachment in portable document format (PDF), except that documents produced pursuant to rules 33 and 34, any record in support of summary judgment in excess of 50 pages, and the record of proceedings filed pursuant to Rules 80B or 80C are not required to be produced or transmitted in electronic format, and, in addition to being electronically served, original signed answers to interrogatories are required to be produced to the requesting party. Electronic Service shall be complete when transmitted, shall be presumed to have been received by the intended recipient, and shall have the same legal effect as the service of an original paper document.

"Delivery of a copy" within this rule means: handing it to the attorney or to the party; or leaving it at the office of the attorney or of the party with the person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein, or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(c) Same: Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendant and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff

constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing: No Proof of Service Required. Subject to the provisions of Rule 26B(f) regarding discovery, all papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter. Such filing by a party shall constitute a representation by the party, subject to the obligations of Rule 11, that a copy of the paper has been or will be served upon each of the other parties as required by subdivision (a) of this rule. No further proof of service is required unless an adverse party raises a question of notice.

(e) Filing with the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court except that a justice or judge may permit the papers to be filed with that justice or judge, in which event the justice or judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. After hours or other office filings are subject to Rule 5(g).

(f) Filing of Papers Not in Compliance with Rules, Orders or Statute. Filings that are received but which are not signed, or are not accompanied at the time of filing by a legally required element, including but not limited to, a filing fee, appeal fee, registry recording fee and envelope, or civil case information sheet, or, if filed by an attorney, do not have the attorney's Maine Bar Registration Number, shall be returned by the clerk as incomplete. The clerk will not docket the attempted filing but will retain a copy of the attempted filing and the notice of return for six months. The offeror may refile the documents when all elements are complete. The filing will be docketed when the complete filing is received.

(g) After Hours and Other Office Filings.

(1) Clerks of courts may not, unless authorized by a judge or justice, accept filings for other courts, or accept pleadings or other documents filed with or left for the clerk after normal business hours. Unless the party or counsel has filed the pleading or document directly with a judge or justice, or the clerk has received explicit instructions from a judge or justice to accept an after-hours filing as filed on the date it is made, the clerk shall date stamp the filing, and docket it as filed, on the next regular business day.

(2) Judges or justices may, for good cause shown, accept filings made after regular business hours, accept filings for other courts, or may make arrangements with a clerk for the clerk to accept a filing after regular business hours. In such a matter, the judge, justice or clerk shall note the judge's authorization on the pleading or document, along with the date and time of actual receipt. The receiving official shall promptly transmit the filing to the proper court, where the filing shall be docketed as filed on the date originally received by the judge, justice, or clerk. Judges or justices may discuss the need for such filings with the offering party or counsel, and such discussions are deemed not to be ex parte communications, or to require notice to opposing parties or counsel.

(h) Civil Case Information Sheets.

(1) Any pleading that sets forth a claim for relief, except those specified in subdivision (2) below, shall be filed and served with a properly completed and executed civil case information sheet, which is available in blank form at the clerk's office and on the Judicial Branch website. Docket numbers of original Disclosure proceedings must be indicated on civil case information sheets initiating a second or subsequent request for disclosure.

(2) Civil case information sheets are not required in cases under Chapter XIII Family Division Rules, protection from abuse cases, protection from harassment cases, Small Claims, money judgment disclosure proceedings, personal property recovery actions, UIFSA actions, mental health actions, child protection cases, Violations Bureau matters, original complaints for forcible entry and detainer, or Administrative Paternity Proceedings.

(i) Form of Papers.

(1) *Size and Formatting.* All pleadings, motions, and original papers, except cover letters and transcripts, shall be typed double-spaced or printed on 8 1/2 x 11-inch paper with text on only one side of each page. The typed matter must be double spaced in at least a 12-point font, except that footnotes and quotations may appear in an 11-point font. All pages shall be numbered.

(2) *Condensed Transcripts.* Unless otherwise ordered by the court, a party serving or filing a transcript of a deposition or other proceeding shall serve or file a copy of the transcript with four 8 1/2 x 11-inch pages of normal type size reduced so that such pages may be reproduced on a single 8 ½ x 11-inch sheet, with text on both sides of the sheet.

(3) *Endorsement for Costs.* In any case where an endorsement for costs is required, the name of an attorney of this State appearing on the complaint filed with the court, shall constitute such an endorsement in absence of any words used in connection therewith showing a different purpose.

(j) Fax Filings.

(1) *Fax Filings.* Facsimile documents are not acceptable substitutes for signed original documents required by M.R. Civ. P. 11 and will not be accepted as filings. Except as otherwise provided in this rule, documents transmitted by facsimile may not be retained in a case file or docketed by a clerk. If an attempt is made to file pleadings or other documents by facsimile, the clerk shall dispose of the documents, and shall attempt to transmit a form notice of disposal back to the sender.

(2) In a proceeding under the Uniform Interstate Family Support Act, documentary evidence or orders from another court or tribunal may be received from another state by facsimile, and may be filed and docketed by a clerk.

(3) Judges may accept correspondence or other communications which are transmitted by fax for informational purposes but any such documents accepted by a judge under this subdivision will not ordinarily be retained in any case file.

(k) Electronic Filing. Filings by electronic transmission of data or by means of a compact disk (CD) or floppy disk or any other method for electronic or internet filing in place of the filing of paper documents required by these rules, is not permitted.

Advisory Note – _____ 2019

Rule 5 is amended to update a cross-reference to amended Rule 26B; to require, in subdivision (h), that complaining parties produce and serve civil case information sheets in place of the previously existing summary sheets; to specify which case types are exempt from the requirement of a civil case information sheet; and to make stylistic changes not affecting the substance of the rule.

Subdivision (i)(1) is amended to incorporate formatting requirements for all pleadings, motions, and original papers except for cover letters and transcripts. These requirements were moved from Rule 7(e)(1) to provide for greater applicability.

6. Rule 7 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 7. PLEADINGS ALLOWED: FORM OF REQUESTS AND MOTIONS

(a) Pleadings. There shall be a complaint and an answer, and a disclosure under oath, if trustee process is used; and there shall be a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim denominated as such; a third-party complaint, if a person who was not an original party is summoned under Rule 14; and there shall be a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

(b) Requests, Motions and Other Papers.

(1) *Requests.* The following process applies to requests for relief if a rule explicitly so directs, as in Rules 16(c)(4), 16(d)(4), 16A(a), 16B(a)(2), 16B(l), 26A(d), 26B(b)(1)(B), 36(b), 37(a), 45(g)(2), 45(h)(2), 56(b)(1), 56(b)(4), and 56(n). All such requests for relief shall be made by letter to the court and shall include a proposed order. All other requests for relief shall be made by motion under Rule 7(b)(2) unless the court otherwise orders or directs.

(A) Communication with Opposing Party. The party making a request shall first confer with all opposing parties in a good faith effort to determine whether the request is disputed and, if so, to resolve the dispute by agreement.

(B) Requests by Agreement. The letter shall state the relief being requested and indicate that the request is agreed upon by all parties. The court may on its own initiative schedule a conference to discuss the request.

(C) Disputed Requests. The requesting party shall request a conference by letter. The letter shall succinctly and without argument or citation describe the nature of the dispute and the relief requested. If any specific documents are at issue, the requesting party shall attach to the letter copies of the documents in question. In exigent circumstances a

request for a conference may be made to the clerk by telephone or in person. The request for a conference constitutes a representation to the court, subject to Rule 11, that the conference with the opposing party has taken place and that the requesting party has made a good faith effort to resolve the dispute.

(D) Conference. In its discretion, the court may schedule a conference in person, by video, or by telephone and provide notice to all parties of the manner, date, and time of the conference. The parties shall be prepared to offer oral argument at an in-person conference or a telephone or video conference on the issues in question if scheduled by the court. No written argument shall be submitted or papers be filed with the clerk without leave of the court.

(E) Order. The justice or judge may make such orders as are necessary. Such orders shall be reduced to writing unless all parties agree that a written order is not required. If the court does not make a decision on the request, the justice or judge may order a written motion and supporting memoranda to be filed under subdivision (b)(2) of this rule and may make such orders as are necessary to narrow or dispose of any dispute.

(2) *Motions.* Except as provided in subdivision (1) above, an application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor and the rule or statute invoked if the motion is brought pursuant to a rule or statute, and shall set forth the relief sought and shall include a proposed order. In addition to the requirements of this rule, motions for summary judgment are subject to the requirements of Rule 56.

(A) Any motion, except a motion for reconsideration of an interlocutory order and a motion that may be heard ex parte, shall include a notice that matter in opposition to the motion pursuant to subdivision (c) of this rule must be filed not later than 21 days after the filing of the motion unless another time is provided by these rules or set by the court. The notice shall also state that failure to file timely opposition will be deemed a waiver of all objections to the motion, which may be granted without further notice or hearing. If the notice is not

included in the motion, the opposing party may be heard even though matter in opposition has not been timely filed.

(B) A pre-judgment motion to decide a case on the merits, pursuant to Rule 12(b)(6), 12(c), or Rule 56, and a post-judgment motion to modify, for a new trial, for relief from judgment, for a stay, or to enforce by contempt, pursuant to Rules 59, 60(b), 62, or 66 shall be accompanied by a fee set in the Court Fees Schedule which shall be paid when the motion is filed. A pre-judgment motion to decide a case based on res judicata or any defense that is addressed in Rule 12(b)(1), (2), (3), (4), or (5), is not subject to payment of a fee.

(C) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(D) Any party filing a motion, except motions for enlargement of time to act under these rules, for continuance of trial or hearing, or any motion agreed to in writing by all counsel, shall file with the motion or incorporate within said motion (i) a memorandum of law which shall include citations of supporting authorities, (ii) a draft order which grants the motion and specifically states the relief to be granted by the motion, and (iii) unless the motion may be heard ex parte, a notice of hearing if a hearing date is available. When a motion is supported by affidavit, the affidavit shall be served with the motion.

(E) Any party filing a motion for enlargement of time to act under these rules or for continuance of trial or hearing, shall include in the motion a statement that (i) the motion is opposed; or (ii) the motion can be presented without objection; or (iii) after reasonable efforts, which shall be indicated, the position of an opposing party regarding the motion cannot be determined.

(F) If a motion is pursued or opposed in circumstances where the moving or opposing party does not have a reasonable basis for that party's position, the court, upon motion or its own initiative, may impose the sanctions provided by Rule 11 upon the party, the party's attorney, or both.

(c) Opposition to Motions.

(1) Any party opposing a motion that was filed before or simultaneously with the filing of the complaint shall file a memorandum and any supporting affidavits or other documents in opposition to the motion not later than the time for answer to the complaint, unless another time is set by the court.

(2) Any party opposing any other motion shall file a memorandum and any supporting affidavits or other documents in opposition to the motion not later than 21 days after the filing of the motion, unless another time is set by the court.

(3) A party failing to file a timely memorandum in opposition to a motion shall be deemed to have waived all objections to the motion.

(d) Reply Memorandum. Within 14 days after the filing of any memorandum in opposition to a motion, or, if a hearing has been scheduled, not less than 2 days before the hearing, whichever date is earlier, the moving party may file a reply memorandum, which shall be strictly confined to replying to new matter raised in the opposing memorandum.

(e) Form and Length of Motions and Memoranda of Law.

(1) *Formatting.* A motion or memorandum of law shall conform to the requirements of Rule 5(i)(1).

(2) *Length of Motions.* A motion may not be longer than three pages in length.

(3) *Length of Memoranda.* Except by prior leave of court,

(A) no memorandum of law in support of or in opposition to a nondispositive motion shall exceed 8 pages.

(B) no memorandum of law in support of or in opposition to a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment, or a motion for injunctive relief shall exceed 20 pages; and

(C) no reply memorandum shall exceed 7 pages.

(f) Hearing. The court may rule on a motion without a hearing if the court, in its discretion, determines that no hearing is necessary. The use of telephone or video conference calls for conferences and non-testimonial hearings is encouraged. The court on its own motion, or upon request of a party, may order conferences or non-testimonial hearings to be conducted by telephone conference calls or with the use of video conference equipment. The court shall determine the party or parties responsible for the initiation and expenses of a telephone or video conference or non-testimonial hearing.

(g) Motion for Reconsideration of an Interlocutory Order.

(1) A motion for reconsideration shall not be filed except to address an interlocutory order of the court for the sole purpose of bringing to the court's attention the points of law or fact that the moving party asserts the court has overlooked or misapprehended.

(2) The provisions of Rule 7(b)-(d) and (e)(2) and (3) do not apply to any motion for reconsideration of an interlocutory order.

(3) The motion for reconsideration shall be filed not later than 14 days after entry of the subject interlocutory order. The motion, including any attachments, shall not exceed 5 pages, shall state with particularity the points of law or fact that the moving party asserts the court has overlooked or misapprehended, and shall contain such arguments in support of the motion as the moving party desires to present. No separate memorandum shall be allowed.

(4) No response or opposition to a motion for reconsideration shall be filed unless requested by the court. If requested, any response or opposition must be filed not later than 7 days from the date of the request unless another time is set by the court. No response or opposition shall exceed 5 pages, including any attachments.

(5) The court may, in its discretion, deny a motion for reconsideration without hearing and before a response or opposition is filed. The motion is not subject to oral argument except by specific order of the court.

(6) If a motion for reconsideration is granted, the court may make such orders as are appropriate. Frivolous or repetitive motions for reconsideration may result in the imposition of appropriate sanctions.

Advisory Note – _____ 2019

Subdivision (b) of Rule 7 is amended to add a new subdivision (b)(1) creating a simplified process for submitting requests to the court as authorized in other rules or as ordered or directed by the court. The Rule 7(b)(1) Process Applies to:

- Rule 16(c)(4): Modification of scheduling order
- Rule 16(d)(4): Scheduling of additional case management conference
- Rule 16A(a): Scheduling trial management conference
- Rule 16B(a)(2): Modification of ADR timelines
- Rule 16B(l): ADR disputes
- Rule 26A(d): Discovery disputes (automatic initial disclosures)
- Rule 26B(b)(1)(B): Request to exceed discovery limits
- Rule 36(b): Authorization to request admissions for non-documentary matters
- Rule 37(a): Discovery disputes (general discovery)
- Rule 45(g)(2): Objection to a subpoena
- Rule 45(h)(2): Enforcement of a subpoena
- Rule 56(b)(1): Seeking summary judgment in a Track A case
- Rule 56(b)(4): Seeking summary judgment in a debt buyer collection action

- Rule 56(o): Request to modify limits on facts, pages, or deadlines on summary judgment

- Rule 133(b): Discovery dispute (BCD)

The subsequent subdivisions are renumbered accordingly, with other amendments incorporated to account for changes to other rules. The language moved to subdivision (b)(2) is amended to include a cross-reference to Rule 56 for motions for summary judgment and to omit what was subdivision (b)(2)(B)—now included as Rule 56(e)(1)(E)—regarding the special notice that must be included with a motion for summary judgment. The subsequent provisions are relabeled as subdivision (b)(2)(B) through (F), with previous subdivisions (b)(5) and (b)(7) omitted.

Former subdivision (d) is removed.

Former subdivision (e), now subdivision (d), is amended to specify that a reply memorandum must be filed within 14 days after the filing of any memorandum in opposition to a motion, or, if a hearing has been scheduled, not less than 2 days before the hearing, *whichever date is earlier*.

Former subdivision (f), now subdivision (e), is reformatted with subdivisions to enhance readability. New subdivision (e)(1) references Rule 5(i)(1), which now contains all formatting requirements. Subdivision (e)(2) specifies that a motion may not exceed three pages in length, and the page limit for a memorandum is reduced from 10 pages to 8 pages—a limit that may be exceeded only with prior leave of the court.

Former subdivision (g), now subdivision (f), is amended to authorize a court to rule on a motion without a hearing if it determines that no hearing is necessary. In relation to this amendment, former subdivision (b)(7) is removed.

New subdivision (g) regarding motions for reconsideration of interlocutory orders is added. In relation to this addition, subdivision (b)(2)(A) is amended to include an exception, for reconsideration of interlocutory orders, to the requirement that a motion include notice of a 21-day period to file opposition for motions, and former subdivision (b)(5) is removed.

Finally, the rule is amended to update cross-references, subdivision numbering, and terminology to conform with amended rules, and to make stylistic changes not affecting the substance of the rule.

7. Rule 12 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 12. DEFENSES AND OBJECTIONS—WHEN AND HOW PRESENTED BY PLEADING OR MOTION—MOTION FOR JUDGMENT ON PLEADINGS

(a) When Presented. A defendant shall serve that defendant's answer within 21 days after the service of the summons, complaint, civil case information sheet, and notice regarding Electronic Service upon that defendant, unless the court directs otherwise when service of process is made pursuant to an order of court under Rule 4(d) or 4(g), and provided that a defendant served pursuant to Rule 4(e), 4(f), or 4(j) outside the Continental United States or Canada may serve the answer at any time within 49 days after such service. A party who is served with a pleading stating a cross-claim against that party shall serve an answer thereto within 21 days after the service upon that party. The plaintiff shall serve a reply to a counterclaim in the answer within 21 days after service of the answer or, if a reply is ordered by the court, within 21 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 14 days after notice of the court's action; (2) if the court grants a motion for a more definite statement the responsive pleading shall be served within 14 days after the service of the more definite statement.

. . . .

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before filing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 14 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 21 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

Advisory Note – _____ 2019

Subdivision (a) is amended to add reference to the civil case information sheet and notice regarding Electronic Service. Subdivisions (a), (e), and (f) of Rule 12 are amended to change deadlines to use 7-day increments.

8. Rule 14 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 14. THIRD-PARTY PRACTICE

(a) When Defendant May Bring in Third Party. After the commencement of an action, a defendant as a third-party plaintiff may cause to be served a summons, complaint, civil case information sheet, and notice regarding Electronic Service upon a person not a party to the action who is or may be liable to such third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party summons, complaint, civil case information sheet, and notice regarding Electronic Service must be served before the deadline established in a court-issued scheduling order or case management order, unless the court grants the third-party plaintiff permission to file it at a later time upon motion and a showing of good cause. The person ~~so~~ served, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim within the subject-matter jurisdiction of the court against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim within the subject-matter jurisdiction of the court against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the plaintiff's failure to do so shall have the effect of the failure to state a claim in a pleading under Rule 13(a). The third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13 and in the District Court may remove the action to the Superior Court as provided in Rule 76C. The notice of removal pursuant to Rule 76C must be filed within the time for serving the answer to the third-party complaint. Any party may move for severance, separate trial, or dismissal of the third-party claim; the court may direct a final judgment upon either the original claim or the third-party claim above in accordance with the provisions of Rule 54(b). A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

. . . .

Advisory Note – _____ 2019

Subdivision (a) of Rule 14 is amended to provide that the third-party summons, complaint, civil case information sheet, and notice regarding Electronic Service must be served before the deadline established in a court-issued scheduling order or case management order, unless the court grants the third-party plaintiff permission to file it at a later time upon motion and a showing of good cause. It is further amended to require that a notice of removal pursuant to Rule76C be filed within the time for serving the answer to the third-party complaint and to make stylistic changes that do not affect the substance of the rule.

9. Rule 15 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and there are more than 63 days before a scheduled trial or the first day of the trial list, the party may so amend it at any time within 21 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 14 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

. . . .

Advisory Note – _____ 2019

Subdivision (a) of Rule 15 is amended to provide that, if the pleading is one to which no responsive pleading is permitted and there are more than 63 days before a scheduled trial or the first day of the trial list, the party may amend the pleading at any time within 21 days after it is served. The subdivision is further amended to change all deadlines to use 7-day increments.

10. Rules 16 and 16A of the Maine Rules of Civil Procedure are repealed and replaced with the following new Rules 16 and 16A:

RULE 16. DIFFERENTIATED CASE MANAGEMENT

(a) Case Management Tracks. Each civil case shall be initially assigned by the court to one of the following tracks for the purpose of establishing the case assignment, scheduling order, and case procedure for the case. The list of case types falling within Track A and of those falling within Track B or Track C is provided on the civil case information sheet that must be filed with a complaint.

(1) *Track A.* Track A contains those cases that are scheduled in accordance with the applicable statutes, rules, and orders of the court and that are typically resolved in an expedited manner with no discovery except as authorized by statute or rule or upon order of the court for good cause shown. The case types listed as Track A cases on the civil case information sheet are presumptively Track A.

(2) *Track B.* Track B contains all civil cases not assigned to Track A or Track C. Automatic initial disclosures are required pursuant to Rule 26A, and discovery shall not exceed the presumptive limits described in Rules 26B, 30, 33, 34, and 36, except as authorized in those rules. In Track B cases, unless otherwise ordered for good cause shown, discovery shall be completed within 6 months after the answer is filed, and the case shall be considered ready for trial after the close of discovery. It is anticipated that a Track B case will be resolved within 10 months after the filing of the complaint.

(3) *Track C.* Track C contains those cases that require special attention because of the number of parties, apparent complexity of the claims and defenses, and/or other comparable factors that show the need for a heightened degree of case management by the court. Automatic initial disclosures are required pursuant to Rule 26A, and discovery shall not exceed the presumptive limits for Track C cases described in Rules 26B, 30, 33, 34, and 36, except as authorized in those rules. In Track C cases, unless otherwise ordered for good cause shown, discovery shall be completed within 8 months after the answer is filed, and the case shall be considered ready for trial after the close of discovery. It is anticipated that a Track C case will be resolved within 18 months after the filing of the complaint.

(b) Case Assignment.

(1) *Case Assignment of Track A Case Types.* Track A cases are not ordinarily assigned to a single judge or justice upon filing. At any time during the proceedings, however, the court may, in its discretion, determine that a Track A case should be assigned to a single judge or justice.

(2) *Case Assignment of Track B and Track C Cases.* Each case that is of a type that falls within Track B or Track C shall be assigned to a single judge or justice when an answer or other response is filed or, if an answer or other response is not required, when proof of service upon any opposing party is filed. The single judge or justice shall assign the case to Track B or Track C.

(A) If assigned to Track B, a scheduling order is issued as described in subdivision (c)(2) below.

(B) If assigned to Track C, the single judge or justice will immediately schedule a case management conference as required in subdivision (d)(3)(A) below.

(c) Scheduling Order.

(1) *Track A.*

(A) A scheduling order for a Track A case shall be consistent with the applicable rules and statutes governing the case type.

(B) The scheduling order may consist entirely of the immediate scheduling of a trial or hearing date.

(2) *Track B.*

(A) A scheduling order for a Track B case shall, where applicable, establish the deadlines to join other parties, amend the pleadings, file motions, designate experts, complete discovery, pursue alternative dispute resolution (ADR), exchange written settlement demands, and complete other pretrial preparation.

(B) The order shall identify the date or time period specified for trial, and the single judge or justice may assign the case for trial without further pretrial process if the single judge or justice determines that such pretrial process is unnecessary. The assignment for trial need not be to the single judge or justice's own trial list, but the assignment must be to a trial list in the court in which the action was commenced.

(3) *Track C.*

(A) A scheduling order shall issue in a Track C case after an initial case management conference at which discovery, motion practice, ADR, and other matters will be discussed as further described in subdivision (d)(3) below. In advance of the case management conference, the parties must confer and submit either (i) a joint draft scheduling order or (ii) if they cannot agree, separate draft scheduling orders.

(B) The court's scheduling order, entered after the case management conference, must establish the deadlines to join other parties, amend the pleadings, file motions, designate experts, complete discovery, pursue ADR, exchange written settlement demands, and complete other pretrial preparation. The order shall direct the parties to exchange written settlement documents by dates certain and shall identify the date or specific time period for trial.

(4) *Modification.* The court may—on its own initiative or at the request of a party—modify the scheduling order. Once established, a scheduling order may be modified only upon a demonstration of good cause for not being able to adhere to the prior schedule established by the court. To seek a modification in a scheduling order, a party must file a request to initiate the process set forth in Rule 7(b)(1).

(5) *Sanctions.* If a party fails to comply with the requirements of any scheduling or other pretrial order, the court may impose upon the party or the party's attorney, or both, such sanctions as the circumstances warrant, which may include the dismissal of all or part of the action, with or without prejudice, the default of a party, the exclusion of evidence at trial, and the imposition of costs including attorney fees and travel. The court may expressly order that the costs of sanctions be borne by counsel and not paid by counsel's client.

(d) Procedures for Case Management Tracks

(1) *Track A.* The case management of all Track A cases shall be governed by statutes, rules, and orders of the court.

(2) *Track B.*

(A) The management of a case on Track B shall be governed by the scheduling order.

(B) If a scheduling or case management conference is ordered, it may be conducted in person, by video conference, or by telephone at the discretion of the court. In those instances, the clerk shall inform counsel or unrepresented parties of the date and time of the conference.

(C) Before any ordered scheduling conference, counsel or unrepresented parties shall confer and discuss the following topics, where applicable:

(i) voluntary exchange of information and discovery;

(ii) a discovery plan;

(iii) narrowing the issues in dispute;

(iv) alternative dispute resolution;

(v) legal issues in the case;

(vi) a plan for disposing of dispositive motions;

(vii) settlement;

(viii) stipulations; and

(ix) the date or specified time period for trial.

(D) The court may require the parties to file a joint proposed discovery and motion plan before an ordered scheduling conference.

(E) At an initial scheduling conference, the court and parties shall address the following topics:

(i) narrowing the trial by identifying the contested material issues;

(ii) sequencing and limiting discovery and motion practice;

(iii) a date or specified time period for trial;

(iv) all legal issues;

(v) settlement;

(vi) alternative dispute resolution options; and

(vii) the date by which the case shall be ready for trial.

The court shall enter an order that imposes limits and sets deadlines for these pretrial matters as applicable.

(3) *Track C.*

(A) Once all defendants named in the complaint have filed answers or other responses, or the time for filing responses has passed without such pleadings being filed, the court shall schedule an initial scheduling conference. The clerk will notify the parties of the scheduled date and time for the conference.

(B) Before the conference, all lawyers and unrepresented parties must confer and discuss

(i) the voluntary exchange of information and discovery;

(ii) a discovery plan;

(iii) narrowing the issues in dispute;

(iv) alternative dispute resolution;

(v) legal issues in the case;

(vi) a plan for disposing of dispositive motions;

(vii) settlement;

(viii) stipulations; and

(ix) the date or specified time period for trial.

(C) Not later than 2 business days before the conference, the lawyers or unrepresented parties shall file a joint proposed discovery and motion plan and any proposal for alternative dispute resolution. If there is no agreement or only a partial agreement, the lawyers or unrepresented parties shall submit a joint plan certifying that the parties conferred and that each party made a good faith effort to resolve the disagreement and indicating any areas of agreement and proposed plans for any areas of disagreement.

(D) At the initial conference, the court and parties shall address the following topics:

(i) narrowing the trial by identifying the contested material issues;

(ii) sequencing and limiting discovery and motion practice;

(iii) the date or specified time period for trial;

(iv) all legal issues;

(v) settlement;

(vi) alternative dispute resolution;

(vii) the date of the next conference; and

(viii) the date by which the case shall be ready for trial.

The court shall enter an order that imposes limits and sets deadlines for these pretrial matters as applicable.

(4) *Additional Case Management Conferences.* The court, in its discretion, may schedule additional case management and settlement conferences, either in person or by telephone. A party requesting an additional case management conference must use the process set forth in Rule 7(b)(1). At each such conference, all counsel or unrepresented parties shall attend, unless excused for good cause, and be prepared to discuss in detail

(A) status of discovery,

(B) the settlement status of the case,

(C) alternative dispute resolution and/or settlement conference,

(D) anticipated motions and the need for them, and

(E) trial assignment and related issues.

The court may direct the parties to participate in a judicial settlement conference before a judge or justice who will not preside over further proceedings in the case. The court may impose additional requirements as necessary to manage the case.

Advisory Note – ___ 2019

Rule 16 is newly adopted to replace former Rule 16.

Subdivision (a) establishes and describes three tracks for purposes of differentiated case management: Track A, Track B, and Track C. The civil case information sheet, to be adopted by administrative order, indicates the presumptive track assignments for the various case types. This subdivision also establishes presumptive time limits for completion of discovery and resolution of the case.

Subdivision (b) provides for the early assignment of Track B and Track C cases to a single judge or justice for purposes of case management and authorizes the court to order single judge or justice assignment in Track A cases in its discretion.

Subdivision (c) describes the type of scheduling order that must be issued for each track. It also includes provisions for the modification of a scheduling order and for the imposition of sanctions for failure to comply with a scheduling order or other pretrial order.

Subdivision (d) establishes the procedures for each case management track. For Track A cases, the statutes, rules, and orders of the court will govern the proceedings. For Track B cases, the scheduling order will govern the proceedings, with scheduling or case management conferences available as the court requires to manage the case. For Track C cases, an initial scheduling conference is required. In Track C cases and in Track B cases in which a scheduling or case management conference is ordered, the parties must discuss specified issues beforehand. In Track B cases, the court may require the parties to file, and in a Track C case the parties must file, a joint proposed discovery and motion plan at least 2 days before the conference. At an initial scheduling conference, the parties must address specific topics, after which the court will enter a scheduling order. Additional case management and settlement conferences may be scheduled by the court in Track B and Track C cases, and requests for additional conferences may be requested by parties pursuant to Rule 7(b)(1). A trial management conference may be scheduled by the court after the close of discovery.

RULE 16A. TRIAL MANAGEMENT CONFERENCE AND ORDER

(a) Trial Management Conference. A trial management conference shall be held as close to the time of trial as is reasonable under the circumstances if the court has, on its own initiative or on the written request of a party pursuant to Rule 7(b)(1), ordered a trial management conference. The clerk of court shall notify counsel and any unrepresented parties of the time and place of the trial management conference. Notice shall be provided at least 21 days before the scheduled conference.

(b) Preparation for Trial Management Conference; Trial Management Memoranda. Not later than 7 days before the trial management conference, each party shall file with the court and serve on every other party a trial management memorandum, not to exceed 7 pages in length unless authorized by the court, containing the following information: (1) a brief factual statement of the party's claim or defense, including an itemized statement of any damages claimed; (2) a brief statement of the party's contentions with respect to any controverted points of law, including evidentiary questions, together with supporting authority; (3) proposed stipulations concerning matters that are not in substantial dispute and to facts and documents that will avoid unnecessary proof; (4) the names and addresses of all witnesses the party intends to call at trial, other than those to be used for impeachment and rebuttal, but in the absence of stipulation, the disclosure of a witness shall not constitute a representation that the witness will be produced or called at trial; and (5) a list of the documents and things the party intends to offer as exhibits at trial.

Each party shall be prepared at the trial management conference to discuss the issues set forth in items (1) through (5) above, to exchange or to agree to exchange medical reports, hospital records, and other documents to be offered as exhibits at trial, to make a representation concerning settlement as set forth in this rule and to discuss fully all aspects of the case.

(c) Trial Management Statement. In lieu of or in addition to trial management memoranda, the court may require the parties to file a joint trial management statement to include

(1) stipulated facts;

(2) all factual issues in dispute;

(3) all legal issues;

(4) all issues regarding the use of information or materials designated as confidential;

(5) each party's list of exhibits;

(6) each party's list of witnesses;

(7) each party's list of experts;

(8) depositions, or portions thereof, to be used in lieu of live testimony;

(9) estimated length of trial;

(10) subject matter of potential motions in limine;

(11) proposed voir dire questions;

(12) proposed jury instructions; and

(13) proposed verdict form.

(d) Conduct of Trial Management Conference. At the trial management conference, the court shall consider the pleadings and documents then on file; all motions and other proceedings then pending; any other matters referred to in Rule 16B or this rule that may be applicable; and any other matters the court deems it appropriate to consider, including:

(1) all matters contained in the trial management memoranda and/or the joint trial management statement;

(2) the formulation and simplification of the trial issues, including the elimination of unsupported claims or defenses;

(3) the admission of facts and documents to avoid unnecessary proof;

(4) stipulations to the authenticity of documents;

(5) requests for advance rulings from the court on

(A) the admissibility of evidence; and

(B) the disposition of pending motions;

(6) the establishment of time limits for presenting evidence and argument;

(7) the estimated length of trial;

(8) motions in limine;

(9) settlement and the use of special procedures to assist in resolving the dispute; and

(10) such other matters as may facilitate the just, speedy, and inexpensive disposition of the case.

(e) Trial Management Order. Either at or following the trial management conference, the court shall enter a trial management order, which shall recite the action taken at the conference, and such order shall control the subsequent course of the action, unless modified by the court to prevent manifest injustice. Any discussion at a settlement conference relating to issues of substance shall not be included in the trial management order. In any case where there is a pending dispositive motion, one item on the trial management conference agenda shall be whether the provisions and deadlines of the trial management order should be stayed until the motion is resolved.

The judge or justice presiding at the trial management conference shall tailor the order to the individual case and consider whether certain provisions of the trial management order should be waived. In a jury case, the original set of proposed exhibits is ordinarily sufficient and should not be filed with the clerk before trial. In a nonjury case, one extra set of proposed exhibits shall be

filed as set forth in the trial management order, whether or not any of the exhibits are the subject of an objection.

An assigned single judge or justice may direct, in a trial management order, that a case be tried by another judge or justice to expedite the matter and prevent undue delay. The assigned judge or justice shall remain assigned to the case if for any reason the scheduled trial before the other judge or justice cannot be held as scheduled.

(f) Sanctions. If a party fails to comply with the requirements of this rule, the court may impose such penalties and sanctions as are just, including the sanctions set forth in Rule 16(d)(5).

(g) Special Circumstances. The court may provide for a special trial management procedure in any case when special circumstances warrant.

Advisory Note – _____ 2019

Rule 16A is newly adopted to replace former Rule 16A, which had governed trial management process in the District Court.

Subdivision (a) authorizes a court to order a trial management conference on its own initiative or at the request of a party pursuant to Rule 7(b)(1).

Subdivision (b) requires the filing of trial management memoranda at least 7 days before the trial management conference. The contents of the memoranda are outlined in the rule, which also requires all parties to be prepared to discuss those issues and exchange documents and exhibits at the trial management conference.

Subdivision (c) authorizes a court to require the filing of a joint trial management statement in lieu of or in addition to the trial management memoranda. The contents of the statement are outlined in this subdivision.

Subdivision (d) governs the conduct of the trial management conference and provides a list of items to be addressed, as applicable.

Subdivision (e) describes what is required of a trial management order issued by the court. The trial management order must be tailored to the individual case. As an example of a tailored trial management order, in a straightforward automobile negligence personal injury case it may not be necessary to list exhibits, and trial briefs and draft jury instructions may be unnecessary.

Subdivision (f) authorizes the imposition of sanctions for failure to comply with Rule 16A.

Subdivision (g) authorizes the court to provide for special procedure when special circumstances warrant.

11. Rule 16B of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 16B. ALTERNATIVE DISPUTE RESOLUTION

(a) Applicability.

(1) *Tracks B and C.* All parties to any Track B or Track C civil action, except actions exempt in accordance with subsection (b) of this rule, shall, within 42 days after the date of entry of the Rule 16 scheduling order, schedule an alternative dispute resolution (ADR) conference. In Track B civil actions, the conference shall be held and completed within 91 days after the date of entry of the Rule 16 scheduling order; in Track C civil actions, the conference shall be held within 126 days after the date of entry of the Rule 16 scheduling order.

(2) *Modification of Timelines.* The timelines may be modified by the court upon request pursuant to Rule 7(b)(1), but the modification shall not affect the timing of trial.

(b) Exemptions. The following categories of cases are exempt from the requirements of this rule:

(1) Actions under Rule 80D(f), 80L, and Chapter XIII;

(2) Appeals under Rule 80B or Rule 80C;

(3) Appeals under 36 M.R.S. § 151;

(4) Actions in which the plaintiff requests exemption and certifies that the likely recovery of damages will not exceed $30,000;

(5) Actions where the parties have participated in statutory prelitigation screening or dispute resolution processes including medical malpractice and Maine Human Rights Act cases;

(6) Actions where the parties certify that they have engaged in formal alternative dispute resolution before a neutral third party. The certification shall state the name of the neutral and the date(s) on which formal alternative dispute resolution conferences occurred;

(7) Actions for nonpayment of notes in mortgage foreclosures and other secured transactions;

(8) Actions by or against prisoners in state, federal or local facilities;

(9) Actions exempted by the court on motion by a party and for good cause shown if the motion seeking exemption is filed by a plaintiff with the complaint or by a defendant within 21 days after the date of entry of the Rule 16 scheduling order;

(10) Track A cases as defined in Rule 16(a)(1);

(11) Family matters governed by the family division rules, M.R. Civ. P. 100-127; and

(12) Actions in which the court ordered in an initial or modified Rule 16 scheduling order that the case will be exempt from ADR.

(c) Motions and Discovery. Motions and discovery practice shall proceed in accordance with these rules while an alternative dispute resolution process is being scheduled and held.

(d) Neutral Selection and ADR Conference Scheduling.

(1) Promptly after the filing of an answer or responsive pleading in a case in which ADR is required, the parties shall confer and select an ADR process (that is, mediation, early neutral evaluation, or nonbinding arbitration) and a neutral third party to conduct the process. If the parties cannot agree on the ADR process, they shall proceed to mediation. If the parties cannot agree on the selection of a neutral, they shall notify the court, which shall designate a neutral third party, with experience appropriate to the nature of the case, from the appropriate roster of court neutrals developed by CADRES;

(2) Unless the court orders or the parties otherwise agree, fees and expenses for the neutral shall be apportioned and paid in equal shares by each party, due and payable according to fee arrangements worked out directly by the parties and the neutral. Fees and expenses paid to the neutral shall be

allowed and taxed as costs in accordance with Rule 54(f). If any party is unable to pay its share of the fees and expenses of the neutral, that party may apply for in forma pauperis status pursuant to Rule 91. If granted, the court may allocate the fee among those parties that are not in forma pauperis or ask the selected neutral to undertake the conference on a reduced fee basis. Failing the consent of the selected neutral to the reduced fee, the court will designate an alternate neutral from the roster developed by CADRES who will agree to undertake the assignment on a reduced fee basis or pro bono.

(3) Once the neutral is selected or designated, the parties shall agree with the neutral on a time and place for the ADR conference. The plaintiff shall notify the court of the name of the neutral and the time and place for the conference no later than 42 days after the date of entry of the Rule 16 scheduling order. The ADR conference must be held and completed no later than 91 days after the date of entry of the Rule 16 scheduling order for Track B cases and no later than 126 days after the date of entry of the Rule 16 scheduling order for Track C cases, unless otherwise ordered by the court pursuant to subdivision (a)(2).

(e) ADR Conference Issues. At the ADR conference, the only required function is to conduct the ADR process selected by the parties. The neutral should not address case management issues unless ordered to do so by the assigned judge. When case management issues are addressed, the neutral should focus the parties on trying to reach agreement on the following: (1) identification, clarification and limitation of remaining issues; (2) stipulations; and (3) discovery-related issues. The neutral may not extend deadlines or otherwise modify directives in the operative scheduling order set pursuant to M.R. Civ. P. 16. An ADR conference need not be reconvened if, after an initial session, the only remaining issues are case management issues.

(f) ADR Conference Attendees.

(1) *Required Attendees.*

(A) Individual parties;

(B) A management employee or officer of a corporate party, with appropriate settlement authority, unless the interests of the

corporate party are fully represented by an insurance company and the corporate party's consent to settle is not necessary;

(C) A designated representative of a government agency party unless the interests of the government agency are fully represented by an insurance company and the government agency's consent to settle is not necessary;

(D) An adjuster for any insurance company providing coverage potentially applicable to the case who has appropriate settlement authority;

(E) Counsel for all parties; and

(F) Nonparties whose participation is essential to settlement discussions—including lienholders—may be requested to attend the conference.

(2) *Sanctions.* The court may impose appropriate sanctions on any party or representative required and notified to appear at a conference who fails to attend.

(3) Attendance shall be in person, or in the discretion of the neutral, for good cause shown, by telephone or video conference.

(g) ADR Conference Documents. If requested by the neutral, 7 days before the conference, the plaintiff shall provide to the neutral:

(1) The complaint;

(2) The answer or other responsive pleading;

(3) Any pretrial scheduling statement;

(4) Any pretrial order that may have issued; and

(5) Any dispositive motions and memoranda that have been filed in connection with those motions.

(h) ADR Conference Report and Order.

(1) *Settlement*. If the ADR conference results in a settlement, the plaintiff shall, within 7 days after the conference, report that fact to the court and include a proposed order. The court shall order the appropriate entry to be made on the docket.

(2) *Neutral Report*. If the ADR conference does not result in a settlement, the neutral shall, within 7 days after the conference, file with the court a report and, if appropriate, a proposed order which indicates any agreements of the parties on matters such as stipulations, identification and limitation of issues to be tried, discovery-related matters and further ADR efforts. If there are no agreements of the parties, the report shall so indicate. If the neutral does not file the report, the parties shall prepare and file the report indicating their points of agreement and disagreement. The parties shall be equally responsible for assuring that the neutral's report is filed in a timely manner and may be subject to appropriate sanctions if the report is filed later than (A) 105 days in Track B civil actions or (B) 140 days in Track C civil actions after the date of entry of the Rule 16 scheduling order unless otherwise ordered by the court.

(i) Safety Considerations. Whether or not the parties have agreed to ADR, if safety issues have been brought to the court's attention, the court must consider whether ADR is appropriate. The court may impose conditions on the ADR process to protect the safety of all parties.

(j) Confidentiality. A neutral who conducts an ADR conference pursuant to this rule, or an ADR process pursuant to subdivision (b)(6), shall not, without the informed written consent of the parties, disclose the outcome or disclose any conduct, statements, or other information acquired at or in connection with the ADR conference. A neutral does not breach confidentiality by making such a disclosure if the disclosure is: (1) necessary in the course of conducting the dispute resolution conference and reporting its result to the court as required in (h)(2); (2) information concerning the abuse or neglect of any protected person; (3) information concerning the intention of one of the parties to commit a crime, or the information necessary to prevent the crime or to avoid subjecting others to the risk of imminent physical harm; or (4) as otherwise required by statute or court order.

(k) Sanctions. If a party or a party's lawyer fails without good cause to appear at a dispute resolution conference scheduled pursuant to this rule, or fails to comply with any other requirement of this rule or any order made thereunder, the court may, upon motion of a party or its own motion, order the parties to submit to ADR, dismiss the action or any part of the action, render a decision or judgment by default, or impose any other sanction that is just and appropriate in the circumstances. In lieu of or in addition to any other sanction, the court may require the party or lawyer, or both, to pay the reasonable expenses, including attorney fees, of the opposing party, and any fees and expenses of a neutral, incurred by reason of the nonappearance.

(l) ADR Disputes. Any dispute regarding the selection of a neutral, payment of the neutral's fee, required attendance at the ADR session, or any other dispute regarding the completion of ADR pursuant to this rule, other than a motion for sanctions pursuant to subdivision (k) above or a motion to enforce a settlement, shall be brought to the court's attention and resolved by the Rule 7(b)(1) process.

Advisory Note – _____ 2019

Subdivision (a)(1) of Rule 16B is amended to establish its applicability only in Track B and Track C actions and to establish new deadlines for scheduling and holding an ADR conference. The former provision allowing for an extension up to 180 days upon the parties' agreement is deleted.

Subdivision (a)(2) is added to provide for modification of timelines pursuant to Rule 7(b)(1).

In subdivision (b), exemption (4) is amended to apply to all cases—not just those for recovery of personal injury damages, and exemption (9) is amended to require motions for an exemption to be filed by a plaintiff with the complaint or by a defendant within 21, rather than 30, days after the entry of the scheduling order. New exemptions are added as subdivisions (b)(10), (11), and (12) for Track A cases, family matters, and actions in which the court ordered exemption in a Rule 16 scheduling order.

Subdivision (d)(1) is amended to require the parties to confer and select an ADR process promptly after an answer *or responsive pleading* in a case in which ADR is required.

Subdivision (d)(3) is amended to shorten deadlines but add a provision authorizing the court to order otherwise pursuant to subdivision (a)(2).

Subdivision (e) is amended to allow a neutral to engage in case management only if ordered by the assigned judge and to require that such case management by a neutral be focused on (1) identification, clarification and limitation of remaining issues; (2) stipulations; and (3) discovery-related issues.

Subdivision (f)(1)(B) and (C) are reworded to clarify that a management employee or officer of a corporate party, or a designated representative of a government agency, with appropriate settlement authority, must attend ADR unless the interests of the corporate party or government agency are fully represented by an insurance company and the corporate party's or government agency's consent to settle is not necessary.

Subdivision (h)(1) is amended to provide broader language requiring the submission of a proposed order instead of a proposed order "concerning the settlement."

Subdivision (h)(2) is amended to require the neutral to file the report within 105 days in Track B civil actions, and within 140 days in Track C civil actions, after the date of entry of the Rule 16 scheduling order unless otherwise ordered by the court.

Former subdivision (i) is deleted because of changes to Rules 38 and 76C that require earlier payment of the jury fee.

Former subdivision (j) is replaced with new subdivision (i), which requires consideration of all parties' safety in deciding whether a matter should be exempt from ADR.

Subdivisions (k) and (l) are redesignated as subdivisions (j) and (k).

In the final sentence of redesignated subdivision (k), the court need not but instead has the discretion to require that the party or lawyer, or both, pay reasonable expenses incurred due to nonappearance. The language, "unless the

judge finds an award would be unjust in the circumstances," is eliminated as no longer necessary.

A new subdivision (l) is added to provide that any dispute regarding the selection of a neutral, payment of the neutral's fee, required attendance at the ADR session, or any other dispute regarding the completion of ADR pursuant to this rule, other than a motion for sanctions pursuant to subdivision (k) or a motion to enforce a settlement, shall be brought to the court's attention and resolved by the Rule 7(b)(1) process.

The rule is also amended to update cross-references to amended rules, make the rule consistent with amended rules, to make subdivision numbering conform with the numbering conventions employed in these rules, to change all deadlines to use 7-day increments, and to make stylistic changes to add clarity.

12. Rule 16C of the Maine Rules of Civil Procedure is repealed.

13. Rule 17 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 17. PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

. . . .

(c) Subrogated Insurance Claims. No claim or counterclaim shall be asserted on behalf of an insurer in the name of the assured for damages resulting from alleged acts of negligence, claimed by right of subrogation or assignment, unless at least 7 days before asserting such claim the insurer gives notice in writing to the assured of its intention to do so. Such notice shall be served in the manner provided for service of summons in Rule 4 or by registered or certified mail, return receipt requested, with instructions to deliver to addressee only. There shall be attached to the pleading asserting such subrogation claim a copy of the notice together with either the return of the person making the service or the return receipt. An assured or any party suing in an assured's right who desires to assert a claim arising out of the same transaction or occurrence shall notify the insurer or its attorney in writing within 7 days after receipt of such notice.

Advisory Note – _____ 2019

Subdivision (c) of Rule 17 is amended to change all deadlines to use 7-day increments and to make a stylistic change not affecting the substance of the rule.

14. Rule 25 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 25. SUBSTITUTION OF PARTIES

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 91 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

. . . .

Advisory Note – _____ 2019

Subdivision (a)(1) of Rule 25 is amended to change the deadline to use a 7-day increment.

15. New Rule 26A of the Maine Rules of Civil Procedure is adopted to read as follows:

RULE 26A. AUTOMATIC INITIAL DISCLOSURES FOLLOWING FILING OF PLEADINGS

(a) Required Initial Disclosures Following Filing of Pleadings. Unless the court has ordered that the case is exempt from discovery or has ordered specific limitations on discovery, each party in a Track B or Track C civil case must, without awaiting a discovery request, provide to the other parties an initial disclosure of information.

(1) *Information Included.* The initial disclosures of the parties shall contain the following information:

(A) The name, address, and telephone number of each individual who is likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, and identifying the subjects of the information;

(B) The name, address, and telephone number of each person whom the other party expects to call as an expert witness at trial, and

(i) A statement of the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and

(ii) A statement of the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years, and the compensation to be paid for the study and testimony; however, unless otherwise ordered by the court, information relating to qualifications, publications and compensation need not be provided for experts who have been treating physicians of a party for any injury that is a subject of the litigation.

(C) A copy of, or a description by category and location of, all documents, electronically or digitally stored information, data compilations, and tangible things that the disclosing party has in its

possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(D) A computation of each category of damages claimed by the disclosing party and the documents or other evidentiary material on which each computation is based; if any claim for loss of income or loss of earning capacity is asserted, the following information and documents must be disclosed:

(i) Copies of federal and state income tax returns, with all attachments, for the period beginning three years before the occurrence giving rise to the complaint up to the date of the initial disclosures; and

(ii) A list of employers' names and addresses, and dates of employment, of the party asserting economic loss for the period beginning three years before the occurrence giving rise to the complaint up to the date of the initial disclosures;

(E) Any insurance agreement under which an insurance business may be liable to satisfy all or part of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(2) *Special Requirements for Claims of Bodily Injury and/or Emotional Distress.* In a case where damages are claimed for bodily injury and/or emotional distress, a party claiming such damages must provide the following as part of its initial disclosures:

(A) All medical records pertaining to examinations and/or treatment of the party with regard to the injuries and/or distress claimed from the date of occurrence to the date of the disclosures;

(B) A list of all health care professionals and hospitals, and other medical institutions or practices where the party seeking damages has been examined or treated with regard to the injuries and/or distress claimed; and

In lieu of the information required to be provided within subdivision (A) above, a party may provide the names and addresses for the medical providers and signed authorizations permitting the opposing party or attorney to obtain the information directly from the medical providers.

If a party claims that any medical records required to be disclosed by this rule should be shielded from disclosure because the records reflect a condition or treatment that is not in any way connected to the bodily injury or emotional distress claimed in the suit, the party shall file an objection consistent with subdivision (d) below.

(b) Timing of Disclosures.

(1) *Timing of Plaintiff's Automatic Initial Disclosures.* A plaintiff shall be required to provide its initial disclosures, containing the information required by subdivision (a) above, not later than 28 days after the defendant has filed an answer or other response to the complaint.

(2) *Timing of Defendant's Automatic Initial Disclosures.* A defendant shall be required to provide its initial disclosures, containing the information required by subdivision (a)(1)(A) above, not later than 14 days after service of the plaintiff's initial disclosures.

(3) *Timing of Automatic Initial Disclosures for a Defendant Pursuing a Counterclaim or Cross-Claim or a Party Bringing a Third-Party Complaint.* A defendant pursuing a counterclaim or cross-claim, or a party bringing a third-party complaint shall be required to provide the same disclosures as a plaintiff, as described in subdivision (a) above within the time specified in subdivision (b)(1) above, measured from the filing of the answer to the counterclaim, cross-claim, or third-party complaint.

(c) Duty to Supplement. The parties are obligated to supplement, on a timely basis, information within the scope of their initial disclosures, as provided by Rule 26B(e) if the supplemental information has not already been disclosed in discovery responses, deposition testimony, or otherwise, up until the time of trial. There is no obligation on the part of another party to request such supplementation.

(d) Objections or Disputes. Any objections to disclosure or disputes concerning the substance or timing of the initial disclosures, or compliance with this rule, shall be addressed in accordance with Rules 7(b)(1) and 37. The court shall give priority to resolving said disputes promptly, given the shorter deadlines involved.

Advisory Note – ____ 2019

Rule 26A—a new automatic initial disclosure rule—incorporates multiple features previously contained in the now-repealed Rule 16C.

Subdivision (a) requires initial disclosures by all parties in Track B and Track C cases and describes the contents of those disclosures, including special required contents for claims involving bodily injury and/or emotional distress.

The timing of the disclosures is governed by subdivision (b).

Subdivision (c) imposes a duty to supplement the disclosures up until the time of trial.

Subdivision (d) provides that objections or disputes are to be raised using the process described in Rules 7(b)(1) and 37(a).

16. Rule 26 of the Maine Rules of Civil Procedure is renumbered as 26B and is amended to read as follows:

RULE 26B. GENERAL PROVISIONS GOVERNING DISCOVERY

(a) Discovery Methods. In addition to the mandatory automatic initial disclosures set out in Rule 26A, parties in cases in which discovery is authorized may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admissions.

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) *In General.* Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(A) Presumptive Limits and Proportionality. Presumptive limits in the discovery rules establish the outside limits for different types of discovery absent a determination by a court that it is appropriate to exceed the presumptive limits in the individual case. To ensure that discovery is proportional to the needs of the case, a court may order that the time for discovery or the amount of discovery be less than a presumptive limit.

(B) Exceeding Presumptive Limits. A party seeking discovery that exceeds the presumptive limits of these rules for depositions, interrogatories, requests for production of documents and things, and, as authorized by Rule 36, requests for admissions, must make a request pursuant to Rule 7(b)(1) showing that the discovery is proportional to

the needs of the case. Factors that may be considered by the court include the nature of the claims and defenses in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

To ensure proportionality, the court may enter orders under subdivision (c) below.

(2) *Trial Preparation: Materials.* Subject to the provisions of subdivisions (4) and (5) below, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (1) above and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a non-party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(2)(D) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(3) *Trial Preparation: Experts.* Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of

subdivision (1) above and acquired or developed in anticipation of litigation or for trial, may be obtained as follows:

(A) Expert Witness to be Called at Trial.

(i) Interrogatories. If the information has not already been made available through the automatic initial disclosures pursuant to Rule 26A or otherwise been ordered to be produced, a party may through interrogatories require any other party to

(a) identify each person whom the other party expects to call as an expert witness at trial,

(b) state the subject matter on which the expert is expected to testify,

(c) state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion,

(d) identify the data or other information considered by the witness in forming the opinions,

(e) identify any exhibits to be used as a summary of or support for the opinions, and

(f) identify the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years, and the compensation to be paid for the study and testimony; however, unless otherwise ordered by the court, information relating to qualifications, publications and compensation need not be provided for experts who have been treating physicians of a party for any injury that is a subject of the litigation.

(ii) Depositions. A party may take the testimony of each person whom another party has designated as an expert witness for trial by deposition pursuant to Rule 30 or Rule 31.

(B) Expert Witness Not Expected to be Called at Trial. A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Communications with Testifying Expert Witness. Communications between the party's attorney and any testifying expert witness, regardless of the form of the communications and including drafts of disclosures ordered by the court pursuant to this subdivision (b)(4) and reports to the attorney, are protected from discovery except to the extent that the communications (i) relate to or contain information about compensation for the expert's study or testimony; (ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or (iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

Communications between the party's attorney and any testifying expert witness not meeting one or more of the above three criteria may be obtained in discovery only (iv) as provided in Rule 35(b), or (v) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(D) Fees. Unless manifest injustice would result, the court shall require that the party seeking discovery of the expert pay the expert a reasonable fee for time spent at the deposition. Upon a showing of good cause, the court may award additional reasonable fees and expenses of the expert for expert discovery pursuant to this rule.

(4) *Information Withheld under Claims of Privilege or Protection of Trial Preparation Materials; Inadvertent Production of Privileged or Trial Preparation Material*.

(A) Claim of Privilege and Identification Required. When a party withholds information otherwise discoverable under these rules by

claiming that it is privileged or subject to protection as trial-preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing the information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(B) Inadvertent Production of Privileged or Trial Preparation Material. If information is inadvertently produced in discovery that is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

(5) *Specific Limitations on Electronically or Digitally Stored Information.* A party need not provide discovery of electronically or digitally stored information from sources that the party identifies as not reasonably accessible because of undue burden or expense. On application under subdivision (c) below or Rule 37(a) to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or expense. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations and remedies of subdivision (c) below. The court may specify conditions for the discovery and shall impose on the requesting party the reasonable expense of producing such electronically or digitally stored information.

(6) *Presumptive Limits on Extent of Discovery and Time for Completion of Discovery.* Unless otherwise ordered by the court, each party in a Track B or Track C civil case in which discovery is available is allowed no more than the number of depositions, interrogatories, requests for production of documents and things, and requests for admissions as prescribed in Rules 30,

33, 34, and 36. Unless otherwise ordered by the court, the time ordered for completion of discovery shall be within following presumptive time limits:

(A) Track B: Not more than 6 months after entry of the scheduling order pursuant to Rule 16(b);

(B) Track C: Not more than 8 months after entry of the scheduling order pursuant to Rule 16(b).

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, any justice or judge of the court in which the action is pending may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including without limitation one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; (9) that the party taking the deposition pay the traveling expenses of the opposite party and of his attorney for attending the taking of the deposition; and (10) that a witness under the control of the party taking the deposition be required to be brought within the state for his deposition. The power of the court under this rule shall be exercised with liberality toward the accomplishment of its purpose to protect parties and witnesses.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(2)(D) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and Timing of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders

otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Responses. A party that has made an initial disclosure in accordance with Rule 26A or has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

(1) *Duty to Supplement.* A party is under a duty seasonably to supplement the response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(2) *Duty to Amend.* A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which (A) the party knows that the response was incorrect when made, or (B) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) *Further Duty to Supplement or Amend.* A duty to supplement or amend responses may be imposed by order of the court, agreement of the parties, or at any time before trial through new requests for supplementation of prior responses.

(f) Filing of Discovery.

(1) *Discovery Not Filed with Court.* Unless otherwise ordered by the court, or necessary for use in the proceeding, notices, written questions and transcripts of depositions, interrogatories, requests pursuant to Rules 34 and 36, and answers, objections and responses thereto shall be served upon other parties but shall not be filed with the court. Notification of the method and date on which discovery documents were served on the parties shall be prepared and served on the parties with the discovery documents but shall not be filed with the clerk. The party that has served notice of a deposition or has otherwise

initiated discovery shall be responsible for preserving and ensuring the integrity of original transcripts and discovery documents for a period of two years after final judgment for use by the court or other parties.

(2) *Discovery Filed with Court.* If depositions, interrogatories, requests or answers or responses thereto are to be used at trial, other than for purposes of impeachment or rebuttal, or are necessary to a ruling on a motion, the complete original of the transcript of the discovery material to be used shall be filed with the clerk 7 days before trial or at the filing of the motion insofar as their use can be reasonably anticipated by the parties. A party relying on discovery transcripts or materials in support of or in opposition to a motion shall file with the memorandum required by Rule 7(b)(2)(D) a list of specific citations to the parts on which the party relies. Discovery transcripts and materials thus filed with the court shall be returned to appropriate counsel after final disposition of the case.

Advisory Note – _____ 2019

Former Rule 26 is renumbered as Rule 26B.

Subdivisions (a) and (e) are amended to make reference to Rule 26A and to specify that Rule 26B applies in cases in which discovery is authorized.

New subdivisions (A) and (B) are added to subdivision (b)(1) to describe presumptive limits and proportionality and to refer to the presumptive limits set for depositions, interrogatories, requests for production of documents and things, and, as authorized by Rule 36, requests for admissions. A party seeking to exceed those limits must establish that increased discovery is proportional to the needs of the case. The paragraph lists factors to be considered in determining proportionality. The final paragraph of subdivision (b)(1) authorizes a court to enter an order under subdivisions (c) or (g) to ensure proportionality.

Former subdivision (b)(2) is omitted as unnecessary given the provisions of Rule 26A(1)(E), and all subsequent items are renumbered.

Former subdivision (b)(4)—now subdivision (b)(3)—includes new headings and subdivisions to enhance clarity. Subdivision (b)(3)(A)(i) is intended to apply if information has not already been made available through

automatic initial disclosures pursuant to Rule 26A or otherwise been ordered to be produced.

New subdivision (b)(6) is added to reference presumptive limits on the extent of discovery and to provide presumptive time limits for the completion of discovery.

Subdivision (e) is amended to also apply to a party that has made an initial disclosure in accordance with Rule 26A. Headings are added to enhance clarity.

Subdivision (f) is amended to new headings for clarity.

Subdivision (g) is deleted. The contents of this portion of former Rule 26 are included, as amended, in Rule 37(a).

The rule is further amended to update cross-references to amended rules and to make stylistic changes not affecting the substance of the rule.

17. Rule 27 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 27. DISCOVERY BEFORE ACTION OR PENDING APPEAL

(a) Before Action.

. . . .

(2) *Notice and Service.* The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 21 days before the date of hearing the notice shall be served either within or without the state in the manner provided in Rule 4(d), (e), or (j) for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4(d), (e), or (j), an attorney who shall represent them and whose services shall be paid for by the petitioner in an amount fixed by the court, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Rule 17(b) apply.

. . . .

(c) Recording in Registry of Deeds. Any deposition to perpetuate testimony taken before action or pending appeal together with the verified petition therefor and certificate of the officer before whom it was taken may, within 91 days after the taking, be recorded in the registry of deeds in the county where the land or any part of it lies, if the deposition relates to real estate; if not, in the county where the parties or any of them reside.

Advisory Note – _____ 2019

Subdivisions (a)(2) and (c) of Rule 27 are amended to change all deadlines to use 7-day increments.

18. Rule 30 of the Maine Rules of Civil Procedure is adopted to read as follows:

RULE 30. DEPOSITIONS UPON ORAL EXAMINATION

(a) Timing and Limits for Depositions.

(1) *When Depositions May Be Taken.* After commencement of the action, , and before the deadline established in a Rule 16 scheduling order, any party to a Track B or Track C case, or to a Track A case if authorized by court order, may take the testimony of any person, including a party, either within or without the state, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if

(1) a party seeks to take a deposition after the deadline established in the scheduling order or

(2) the plaintiff seeks to take a deposition before the expiration of 28 days after service of the summons, complaint, civil case information sheet, and notice regarding Electronic Service upon any defendant, except that leave is not required in this situation if

(A) a defendant has served a notice of taking deposition or otherwise sought discovery, or

(B) notice is given as provided in subdivision (b)(2) below, including the required statement and facts supporting the need to take the deposition before the 28-day period has passed.

(2) *Presumptive Limits.* Unless otherwise ordered by the court, each party to the action (plaintiffs collectively, defendants collectively, and third-party defendants collectively) may take no more than the following number of depositions:

(1) Track B: 4 depositions;

(2) Track C: 5 depositions.

The attendance of non-party witnesses may be compelled by subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) Notice of Examination: General Requirements; Non-stenographic Recording; Production of Documents and Things; Deposition of Organization.

(1) A party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action at least 14 days before the time of the taking of the deposition, but the court on an ex parte application and for good cause shown may prescribe a shorter notice.

The notice shall state:

(A) The time and place for taking the deposition and whether a stenographic court reporter will be present to record the deposition;

(B) The name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular category of persons to which the person to be deposed belongs;

(C) The person before whom the deposition will be taken; and

(D) The method by which the deposition will be recorded, which method shall be one of the methods designated in subdivision (b)(4) below.

If a subpoena duces tecum for the inspection or copying of materials is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the state and will be unavailable for examination unless the person's deposition is taken before expiration of the 28-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the

best of the attorney's knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.

If a party shows that when the party was served with notice under this subdivision (b)(2) the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against the party.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The following requirements must be met when recording a deposition.

(A) A deposition may be recorded by:

(i) Shorthand writing,

(ii) Stenotype machine,

(iii) Tape recording with multi-track tape,

(iv) Video camera recording, or

(v) Any other method agreed to by the parties or approved by the court.

(B) Any method for recording a deposition shall:

(i) Comply with the requirements of Rule 28;

(ii) Assure an accurate and trustworthy recording;

(iii) Provide clear identification of the separate speakers;

(iv) Permit editing for use at trial in a manner that will allow expeditious removal of objectionable and extraneous material without significant disruption in presentation of the edited testimony to a jury;

(v) Allow prompt preparation of a written transcript of the proceedings if such is ordered by any party or the court; and

(vi) Allow prompt copying of any audio or video tape of the proceedings, where an audio or video tape is used, if such is ordered by any party or the court.

Any party may object to the taking of a deposition on the grounds that the recording method is not one of those approved in subdivision (b)(4)(A) above, or that the recording method will not comply with one or more of the criteria in subdivision (b)(4)(B) above. Such an objection shall be served in writing and received by the other parties and the court at least 3 days before the scheduled date for the deposition. Where such an objection is served, the deposition shall be deferred until such time as the objection is heard by the court.

In a video deposition, the camera shall focus only on the witness and any exhibits utilized by the witness, unless the parties agree otherwise.

Any party may record a deposition by any means, provided that the recording does not disrupt or impede the deposition process. The method of recording specified in the notice by the party noticing the deposition shall constitute the only official record of the deposition. Any party intending to record a deposition by another means designated in subdivision (b)(4)(A) above–shall give notice in writing to every other party of the additional recording method.

(5) The notice to a party deponent may be accompanied by a request that at the taking of the deposition the party deponent produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of Rule 26B(b). The party deponent may, within 7 days after service of the notice, serve upon the party taking the deposition written objection to inspection or copying of any or all of the designated materials. If objection is made, the party taking the deposition shall not be entitled to inspect the materials except pursuant to an order of any justice or judge of the court in which the action is pending. The party taking the deposition may move at any time before or during the taking of the deposition for an order under Rule 37(a) with respect

to any objection to the request or any part thereof, or any failure to produce or permit inspection as requested.

(6) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Maine Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be recorded by the means specified in the notice of taking as provided in subdivision (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed. The court may order the cost of transcription paid by one or some of, or apportioned among, the parties.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Manner of Making Objections; Duration of Depositions; Motion to Terminate or Limit Examination.

(1) Any objection to evidence during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under paragraph (3).

(2) No deposition shall exceed 7 hours of testimony, but the court may allow additional time on such terms as justice requires for a fair examination of the deponent or if the deponent or another party impedes or delays the examination. If the court finds such an impediment, delay, or other conduct that has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney fees incurred by any parties as a result thereof.

(3) At any time during a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, any justice or judge of the court in which the action is pending may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26B(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(2)(D) apply to the award of expenses incurred in relation to the motion.

(e) Submission to Witness; Changes; Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness by the officer for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 28 days

of its submission to the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part. The officer shall notify counsel of record of the witness's action or inaction.

(f) Certification by Officer; Exhibits; Copies.

(1) The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. The officer shall then promptly deliver or mail it to the party that has served the original notice of a deposition.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification, if the person producing the materials affords to all parties fair opportunity to verify the copies by comparison with the originals, and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) Where the deposition is recorded electronically or digitally and a transcript is not prepared, the certification and materials required in paragraph (1) of this subdivision shall be filed with the tape cassette or other electronically or digitally preserved record of the deposition.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney fees.

(h) Depositions for Use in Foreign Jurisdictions.

(1) The deposition of any person may be taken in this state upon oral examination pursuant to the laws of another state or of the United States or of another country for use in proceedings there.

(2) If a party seeking to take a deposition or depositions under this subdivision files with the clerk in the county where any deponent resides or is employed or transacts business in person an application as provided in paragraph (3) of this subdivision,

(A) the clerk shall docket the application as though it were a pending action under these rules and may issue a subpoena or subpoenas as provided in Rule 45, in aid of the taking of the deposition of any person named or described in the application; and

(B) whether or not a subpoena has issued, any deponent or party may apply for and be granted any appropriate relief as provided in subdivision (d) of this rule and in Rules 37(a) and 37(b)(1).

(3) The application required by paragraph (2) of this subdivision shall bear the same title as the action or proceeding in the court where it is pending and shall set forth

(A) The name and location of the court in which the action or proceeding is pending.

(B) The title and docket or other identifying number of the action or proceeding in the court where pending.

(C) A brief statement of the nature of the action or proceeding and the provisions of the laws of the jurisdiction where the action or proceeding is pending which authorize the deposition.

(D) The time and place for taking each deposition.

(E) The name and address of each person to be examined, if known, and if the name is not known a general description sufficient to identify the person or the particular class or group to which the person belongs.

(F) If a subpoena duces tecum is to be served, a designation of the materials to be produced.

(G) A statement that timely and adequate notice of the taking has been given to all opposing parties either in the manner required by the laws of the jurisdiction where the action or proceeding is pending or in the manner provided in paragraph (1) of subdivision (c) of this rule.

The application shall be signed by a member of the bar of this state, and the member's signature constitutes a certification by the member that to the best of the member's knowledge, information, and belief all statements and supporting facts contained therein are true. The sanctions provided by Rule 11 are applicable to the certification.

Advisory Note – _____ 2019

Subdivision (a) of Rule 30 is amended to include two subdivisions. Subdivision (a)(1) refers to Rule 16 scheduling orders, to apply only in Track B and Track C cases unless ordered by the court in a Track A case. Clarification is provided as to when leave of court must be obtained to take a deposition. Subdivision (a)(2) is added to set presumptive limits on the number of depositions authorized in Track B and Track C cases (4 for Track B and 5 for Track C).

Subdivision (b)(1) is amended to specify that the final paragraph applies when seeking a subpoena for the inspection or copying of materials.

Former subdivision (d)(2), now subdivision (e)(2), is amended to provide that a deposition may not last longer than 7 hours, as compared to the previous rule's 8-hour limit.

Rule 30 is also amended to update cross-references based on rule amendments, to change deadlines to use 7-day increments, to make subdivision numbering consistent, and to make other stylistic changes not affecting the substance of the rule.

19. Rule 31 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 31. DEPOSITIONS UPON WRITTEN QUESTIONS

(a) Serving Questions; Notice. After commencement of the action, any party may take the testimony of any person, including a party, either within or without the state, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

Within 28 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 7 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 7 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

. . . .

Advisory Note – _____ 2019

Rule 31(a) is amended to change deadlines to use 7-day increments.

20. Rule 33 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 33. INTERROGATORIES TO PARTIES

(a) Availability; Procedures for Use. Any party to a Track B case or Track C case may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons, complaint, civil case information sheet, and notice regarding Electronic Service upon that party.

(b) Presumptive Limits. Unless otherwise ordered by the court, each party is allowed to serve no more than the following number of interrogatories on any other party:

(1) Track B case: 20;

(2) Track C case: 30.

Each distinct subpart in an interrogatory shall be deemed a separate interrogatory for the purposes of this rule.

(c) Answers and Objections. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 28 days after the service of the interrogatories, except that a defendant may serve answers or objections within 42 days after service of the summons, complaint, civil case information sheet, and notice regarding Electronic Service upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory. A party in responding

to interrogatories shall set forth each interrogatory in full immediately preceding the party's answer or objection thereto.

(d) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26B(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(e) Option to Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records, including electronically or digitally stored information, of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

Advisory Note – _____ 2019

Subdivision (a) of Rule 33 is amended to apply only in Track B and Track C cases and to note service of the civil case information sheet and notice regarding Electronic Service consistent with Rule 5(h).

A new subdivision (b) is added to set presumptive limits on the number of interrogatories that may be served (20 for Track B and 30 for Track C).

A heading is added to create a new subdivision (c) regarding answers and objections and to note service of the civil case information sheet and notice regarding Electronic Service consistent with Rule 5(h).

Former subdivisions (b) and (c) are now subdivisions (d) and (e). Subdivision (e) is further amended to include reference to digitally stored information.

The rule is further amended to update cross-references based on other rule amendments and to change deadlines to use 7-day increments.

21. Rule 34 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 34. PRODUCTION AND INSPECTION OF DOCUMENTS AND THINGS; ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

(a) Scope. Any party may serve on any other party a request to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, electronically or digitally stored information, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26B(b) and which are in the possession, custody or control of the party upon whom the request is served. The number, nature, and scope of the requests shall be proportional to the needs of the case.

(b) Procedures. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons, complaint, civil case information sheet, and notice regarding Electronic Service upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically or digitally stored information is to be produced.

The party upon whom the request is served shall serve a written response within 28 days after the service of the request, except that a defendant shall serve a response within 42 days after service of the summons, complaint, civil case information sheet, and notice regarding Electronic Service upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, including an objection to the requested form or forms for producing electronically or digitally stored information, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order

under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to produce or to permit inspection as requested.

A party that produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request. If a request does not specify the form for producing electronically or digitally stored information, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form that is reasonably usable. A party need not produce the same electronically or digitally stored information in more than one form.

A party upon whom a request is served to produce the party's medical, employment or other records in the possession of a third party may, at the party's option, produce in place of such records an effective written authorization by which the submitting party may obtain the requested records. Within 7 days of receiving records pursuant to the authorization, the party submitting the request shall serve upon the authorizing party a complete copy of the records so obtained.

(c) Entry Upon Designated Land and Inspection of Property. Any party may serve on any other party a request to permit entry upon designated land or to inspect property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26B(b).

(d) Persons Not Parties. A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45.

Advisory Note – _____ 2019

The heading to Rule 34 is amended to indicate that it applies to the production of documents and things. Subdivision (a) is amended to provide that it applies in Track B and Track C cases and to eliminate language that is unnecessary given the addition of new subdivision (d), described below.

Subdivision (b) is relabeled subdivision (c) and is amended to include references to the civil case information sheet and notice regarding Electronic Service described in Rule 5(h) and to digitally stored information.

A new subdivision (c) is added to govern the entry upon designated land and inspection of property.

Former subdivision (c) is relabeled subdivision (d).

The rule is further amended to update cross-references based on other rule amendments and to change deadlines to use 7-day increments.

22. Rule 36 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 36. REQUESTS FOR ADMISSIONS

(a) Requests for Admissions. Unless otherwise ordered by the court pursuant to subdivision (b) below, a party may serve upon any other party a written request for the admission only of the genuineness of any relevant documents, not prepared in anticipation of the pending action, described in and attached with the request. No requests for admissions may be served in a collection action brought by a "debt buyer" as defined in 32 M.R.S. § 11002.

(b) Court Authorization Required to Serve Requests for Admissions of Non-Documentary Matters. No requests for admissions of matters other than of the genuineness of documents as described in subdivision (a) above shall be served without the prior submission to the court and approval of the specific requests for admissions by a justice or judge of the court in which the action is pending. The process for requesting court approval is as set forth in Rule 7(b)(1).

(c) Service of Requests and Answers or Objections. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons, complaint, civil case information sheet, and notice regarding Electronic Service upon that party.

Subject to the provisions of subdivision (d) of this rule, the matter is admitted unless, within 28 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 42 days after service of the summons, complaint, civil case information sheet, and notice regarding Electronic Service upon that defendant. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter, or set forth in detail the reasons why the answering party cannot truthfully

admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party that considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it. A party in responding to requests for admissions shall set forth each request in full immediately preceding the party's answer or objection thereto.

The party that has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time before trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 and 16A governing the modification of scheduling and pretrial orders, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party that obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

Advisory Note – _____ 2019

Subdivision (a) of Rule 36 is amended to make requests for admissions available as of right only with respect to requests for the admission of the genuineness of any relevant documents not prepared in anticipation of the pending litigation and to preclude the use of any requests for admissions in debt buyer collection actions.

A new subdivision (b) is added to require court authorization to serve requests for admissions of matters other than the genuineness of documents described in subdivision (a). Subdivision (b) directs parties to the straightforward process set forth in new Rule 7(b)(1) to seek that approval.

A new heading is inserted to create subdivision (c) governing the service of requests and answers or objections. The subdivision, formerly part of subdivision (a), is amended to reference the civil case information sheet and notice regarding Electronic Service required by Rule 5(h), omit unnecessary language, update cross-references based on rules amendments, change deadlines to use 7-day increments, and make stylistic changes not affecting the substance of the rule.

Former subdivision (b) is redesignated as subdivision (d). This subdivision is amended to update cross-references and make the language consistent with other rule amendments, and make stylistic changes not affecting the substance of the rule.

23. Rule 37 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 37. DISCOVERY DISPUTES, FAILURE TO MAKE DISCOVERY, AND SANCTIONS

(a) Request for Resolution of a Discovery Dispute.

(1) *Request.* To submit a discovery dispute to the court for a ruling, a party must request a discovery order by following the process set forth in Rule 7(b)(1). In cases involving objections to interrogatories or document requests, the requesting party shall attach to the letter copies of only the specific objections in question and the specific interrogatories or requests to which objection has been made. No written argument shall be submitted except by court order.

(A) The court may issue an order without a conference if the request is based on a failure to either answer or object to outstanding discovery requests.

(B) In all other cases, the parties shall be prepared to offer oral argument at an in-person conference or a telephone or video conference on the discovery issues in question if scheduled by the court.

(2) *Order at Conference.* If the dispute, or any part of the dispute, is not resolved at the conference, the justice or judge may enter an order narrowing the dispute or may order the parties to submit written arguments or memoranda. The justice or judge may require counsel for one of the parties to submit a proposed order for this purpose. If the court resolves the dispute at conference, it may enter such orders as it deems necessary, with or without the assistance of counsel in drafting. For instance:

(A) On matters relating to a deposition being taken outside the state, the court may order that an application for an order to the deponent be made to any court having general civil jurisdiction in the place where the deposition is being taken.

(B) If a deponent fails to answer a question propounded or submitted under Rule 30 or 31, or a corporation or other entity fails to

make a designation under Rule 30(c)(7) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for production or inspection submitted under Rule 30(c)(6) or 34, fails to respond that inspection will be permitted as requested or fails to produce or to permit inspection as requested, the court may enter an order compelling an answer, or a designation, or an order compelling production or inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order. An evasive or incomplete answer is to be treated as a failure to answer.

(C) If the court denies the request in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26B(c).

(D) The court may award expenses to a party as follows.

(i) If the request is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the request or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the opposition to the request was substantially justified or that other circumstances make an award of expenses unjust.

(ii) If the request is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the request or both of them to pay to the party or deponent that opposed the motion the reasonable expenses incurred in opposing the request, including attorney fees, unless the court finds that the making of the request was substantially justified or that other circumstances make an award of expenses unjust.

(iii) If the request is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the request among the parties and persons in a just manner.

(b) Failure to Comply with Order.

(1) *Sanctions by Court in Place Where Deposition Is Taken.* If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the place in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) *Sanctions by Court in Which Action Is Pending.* If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(c)(7) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under Rule 37, Rule 35 or subdivision (a) of this rule, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) or Rule 37 requiring that party to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(c), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(c)(7) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take a deposition, after being served with a proper notice, or to comply with a properly served request for production under Rule 30(c)(6), without having made an objection thereto, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for production or inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26B(c).

(e) Electronically or Digitally Stored Information. Absent exceptional circumstances, the court shall not impose sanctions under these rules on a party for failing to provide electronically or digitally stored information lost as a result of the routine, good faith operation of an electronic information system.

Advisory Note – _____ 2019

Rule 37(a) is added. This subdivision is an amended version of former Rule 26(g) governing discovery disputes. The rule now requires use of the Rule 7(b)(1) process to resolve discovery disputes. The content of former subdivision (a) of Rule 37 is largely incorporated in the subdivision as amended, but all references to a motion to compel discovery are removed in favor of the new, more efficient, request process.

The rule is also amended to update cross-references based on other rule amendments, to add a reference to digitally stored information in subdivision (e), and to make stylistic changes not affecting the substance of the rule.

24. Rule 38 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 38. JURY TRIAL DEMAND IN THE SUPERIOR COURT

(a) Right Preserved; Number. The right of trial by jury as declared by the Constitution of the State of Maine or as given by a statute shall be preserved to the parties inviolate.

(b) Demand. In an action in the Superior Court, any party may demand a trial by jury of any issue triable of right by a jury by filing a demand and paying the fee therefor as set forth below.

(1) *Specification of Issues.* In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If a plaintiff does not demand a trial by jury or demands a trial by jury on only some of the issues, a defendant who wishes to demand a trial by jury of any other or all of the issues of fact in the action shall file, within the time provided in subdivision (2) below, a demand for trial by jury and, in the absence of a demand by the plaintiff, pay the jury fee upon filing the demand.

(2) *Time of Demand and Fee in the Superior Court.* A party bringing a claim must file any demand for a jury trial, and pay the related fee, within 28 days after the filing of the responsive pleading. A party defending against a claim must file any demand for jury trial, and pay the related fee, no later than 35 days after the time for serving the answer to a complaint or other pleading to which an answer is allowed under Rule 7(a) or reply to a counterclaim, or at the time for appearance if no written answer is required.

(c) Waiver. The failure of a party to make a demand and pay the fee as required by these rules constitutes a waiver by that party of trial by jury; provided that for any reason other than a party's own neglect or lack of diligence, the court may allow a party to file and serve a demand upon all other parties within such time as not to delay the trial.

(d) Withdrawal. A demand for trial by jury made as provided in these rules may not be withdrawn without the consent of all parties.

Advisory Note – _____ 2019

The title of Rule 38 is amended to clarify that the rule applies to a jury trial demand in the Superior Court.

Subdivision (b) is amended to require that a party bringing a claim file any demand for a jury trial, and pay the related fee, within 28 days after the filing of the answer to that claim, and that a party defending against a claim file any demand for jury trial, and pay the related fee, within 35 days after the filing of the responsive pleading to that claim or at the time for appearance if no written answer is required. Former subdivision (c) is relabeled as subdivision (b)(1) and the 10-day deadline therein eliminated. Other minor modifications are incorporated to remove unnecessary language.

Subdivisions (d) and (e) are redesignated as subdivisions (c) and (d), and the references to "this rule" are reworded, "these rules."

25. Rule 39 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 39. TRIAL BY JURY OR BY THE COURT

(a) By Jury. When trial by jury has been demanded as provided in Rule 38 or Rule 76C, the action shall be placed on the Jury Trial List when scheduled under Rule 16, and the trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of the State of Maine.

(b) By the Court. Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court.

(c) Hearings or Trials Outside County or Division. Any hearings without a jury may be held at such place in any county or division as the court may appoint; and the clerk in the county or division in which the action is pending shall transmit the papers in the action to the justice or judge to hear the same, who shall return them after hearing.

Advisory Note – _____ 2019

Rule 39 is amended in subdivision (a) to specifically require the placement of an action on the Jury Trial List when scheduled under Rule 16, subdivision (b) is amended to eliminate the provision authorizing the Superior Court to order a trial by jury without receiving a demand, and the heading of subdivision (c) is amended to include hearings outside the division.

Subdivision (d) regarding the use of advisory juries is eliminated.

26. Rule 40 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 40. ASSIGNMENT OF CASES FOR TRIAL; CONTINUANCES

(a) Definitions.

(1) "Continuance Order" is defined as an order entered by a judge that effectively removes a case from a trial list or date certain court event in response to a written motion. Absent the entry of a continuance order, a case is subject to being called for trial throughout the trial list period or for a court event on the designated date certain.

(2) "Effectively removes a case from a trial list" includes the unavailability for essential dates or when the number of days necessary for trial of the case, based on the parties' good faith estimate of the time for trial, is more than the difference between (A) the number of days remaining on a trial list at the time a motion for a continuance or a request for protection is made, and (B) the number of days sought in the motion for a continuance or the request for protection.

(3) "Essential Dates" include jury selection days, case management days, and other dates essential to the completion of trial on the list at issue.

(4) "Request for Protection" is defined as an informal, non-docketed written request that a case not be called for trial on one or more specified days of a trial list and which, if allowed, would not effectively remove a case from a trial list. A request for protection shall only be acted upon by a judge and shall not take the place of or be treated as a motion for continuance.

(5) "Scheduled" is defined as follows: (A) for trial list cases, "scheduled" means a case has been assigned to a trial list as that term is defined in this rule; (B) for all other cases, "scheduled" means that a date certain has been identified for a hearing or trial.

(6) "Trial list" means the list of a group of cases assigned to an actual, discrete period of time. A trial list is not simply a list of cases ready for trial. Rather, it is a list for a trial session that has beginning and ending dates,

consists primarily of consecutive court days, and realistically exposes all of the assigned cases to trial.

(b) Assignment for Trial.

(1) *Jury Trial List*. In those actions in which a jury trial has been properly demanded, the clerk of the Superior Court shall maintain a Jury Trial List of actions in the chronological order in which they are scheduled by the court and added to the list. Scheduling of actions for trial from the list shall be at the direction of the court.

(2) *Nonjury Trial List.* The clerks of the Superior Court and the District Court shall each maintain a Nonjury Trial List of actions in the chronological order in which they are added to their respective lists. The assigned single judge or justice shall by order provide for the setting of cases for trial upon the calendar, the order in which they shall be heard and the resetting thereof. All actions, except those otherwise governed by statute or court orders shall be in order for trial at a time set by the court on such notice as it deems reasonable, but not less than 7 days after service of the last required pleading.

(c) Continuances. The purpose and goals of these rules include providing predictable judicial action and promoting an effective and efficient process for resolving disputes. A motion for a continuance order shall be made in writing immediately after the cause or ground becomes known and shall be granted only for good cause shown. The motion must certify (1) the cause or ground for the request, (2) when the cause or ground for the request became known, and (3) whether the motion is opposed. If the position of the other party or parties cannot be ascertained, notwithstanding reasonable efforts, that shall be explained. Telephonic or other oral notice of the motion shall be given immediately to all other parties. The fact that a motion is unopposed does not assure that the requested relief will be granted. Continuances should only be granted for substantial reasons. The pendency of any motion shall not delay the scheduled start of a trial.

(d) Unavailable Witness or Evidence. The court need not entertain any motion for a continuance based on the absence of a material witness unless supported by an affidavit which shall state the name of the witness, and, if known, that witness's residence, a statement of that witness's expected

testimony and the basis of such expectation, and the efforts which have been made to procure that witness's attendance or deposition. The party objecting to the continuance shall not be allowed to contradict the statement of what the absent witness is expected to testify but may disprove any other statement in such affidavit. Such motion may, in the discretion of the court, be denied if the adverse party will admit that the absent witness would, if present, testify as stated in the affidavit, and will agree in writing, signed by that party or that party's attorney, that the same shall be received and considered as evidence at the trial as though the witness were present and so testified. The same rule shall apply, with necessary changes, when the motion is grounded on the want of any material document, thing or other evidence. In all cases, the grant or denial of a continuance shall be discretionary whether the foregoing provisions have been complied with or not.

(e) Protections. A request for a protection from a trial list shall be made immediately after the cause or ground becomes known~~,~~ and shall be submitted in a written Uniform Request for Protection Form or in a writing containing substantially the same information. Any requests for protection that the court concludes would effectively remove a case from a trial list shall be summarily denied and shall not be treated as motions for a continuance.

Advisory Note – _____ 2019

Rule 40 is amended to conform with the procedures established in Rules 16 and 16A as amended and to make stylistic changes.

Subdivision (a) is amended to conform with the numbering conventions of these rules.

Subdivision (b)(1) is amended to eliminate reference to the "Pre-Trial List." In subdivision (b)(2), the following language is added: "The clerks of the Superior Court and the District Court shall each maintain a Nonjury Trial List of actions in the chronological order in which they are added to their respective lists." Subdivision (b)(2) is also amended to establish a deadline using a 7-day increment.

Subdivision (c) is amended to provide that the purposes and goals of these rules include providing predictable judicial action and promoting an effective and efficient process for resolving disputes. The subdivision is also

amended to provide that the pendency of any motion shall not delay the scheduled start of a trial.

Subdivision (e) is amended to require that any requests for protection that the court concludes would effectively remove a case from a trial list be summarily denied and not be treated as motions for a continuance.

27. Rule 41 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 41. DISMISSAL OF ACTIONS

(a) Voluntary Dismissal: Effect Thereof.

(1) *By Plaintiff; by Stipulation.* Subject to the provisions of Rule 23(e) and of any statute, an action may be dismissed by the plaintiff without order of court (A) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (B) by filing a stipulation of dismissal signed by all parties that have appeared in the action; provided, however, that no action wherein a receiver has been appointed shall be dismissed except by order of the court. A dismissal under this paragraph may be as to one or more, but fewer than all claims, plaintiffs, or defendants. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff that has once dismissed in any court of this state or any other state or the United States an action based on or including the same claim.

(2) *By Order of Court.* Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant before the service upon the defendant of the plaintiff's motion to dismiss, the counterclaim shall remain pending for independent adjudication by the court despite the dismissal of the plaintiff's claim. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary Dismissal: Effect Thereof.

(1) *On Court's Own Motion.* The court, on its own motion, after notice to the parties, and in the absence of a showing of good cause to the contrary, shall dismiss an action for want of prosecution at any time more than one year after the last docket entry showing any action taken therein by the plaintiff other than a motion for continuance.

(2) *On Motion of Defendant.* For failure of the plaintiff to prosecute for one year or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant.

(3) *Effect.* Unless the court in its order for dismissal otherwise specifies or the dismissal is pursuant to subdivision (b)(1), a dismissal under this subdivision (b) and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

(c) Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim.

(d) Costs of Previously-Dismissed Action. If a plaintiff that has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

Advisory Note – _____ 2019

Subdivision (b)(1) of Rule 41 is amended to change the time for dismissal for failure to prosecute from two years to one year.

Subdivision (b)(2) is amended to authorize a defendant to move for dismissal after one year, rather than two years, for failure to prosecute.

Subdivision (b)(3) is amended to provide that a dismissal for failure to prosecute initiated by the court pursuant to subdivision (b)(1) is not treated as an adjudication upon the merits.

The rule is also amended to make numbering consistent and to make stylistic changes not affecting the substance of the rule.

28. Rule 45 of the Maine Rules of Civil Procedure is repealed and replaced with the following:

RULE 45. SUBPOENA

(a) Scope.

(1) *Scope.* Subject to subdivision (2) below, a subpoena may command a person or entity to

(A) testify by deposition upon oral examination pursuant to Rule 30;

(B) testify by deposition upon written questions pursuant to Rule 31;

(C) testify at trial or hearing; and/or

(D) (i) produce and permit the party serving the subpoena, or someone acting on that party's behalf, to inspect and copy any designated documents (including writings, books, drawings, graphs, charts, photographs, electronically or digitally stored information, and other data compilations from which information can be obtained, translated, if necessary, by the subject of the subpoena through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things that constitute or contain matters within the scope of Rule 26B(b) and which are in the possession, custody or control of the person or entity upon whom the subpoena is served; or (ii) permit entry upon designated land or other property in the possession or control of the person or entity upon whom the subpoena is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26B(b).

(2) *Subpoenas Directed to Parties to the Action.* A subpoena shall not be used to command a party to the action to testify by deposition upon oral or written examination, to produce during discovery or pretrial proceedings documents or tangible things, or to permit entry upon land for inspection and other purposes. Rules 30, 31, and 34 shall govern for those purposes.

(b) Form.

(1) Every subpoena shall

(A) state the name of the court from which it is issued;

(B) state the title of the action, the name of the court in which it is pending, and its civil action number;

(C) command each person or entity to whom it is directed to perform or permit one or more of the acts set forth in subdivision (a)(1) of this rule at a specified time and place;

(D) comply with the notice and other requirements of Rule 30(b) and Rule 31(a), except as otherwise provided in this rule; and

(E) set forth the text of subdivisions (e) through (i) of this rule.

(2) A command to produce documents or tangible things or to permit entry upon land for inspection and other purposes, as set forth in subdivision (a)(1)(D) above, may be included in a subpoena to appear at trial, hearing, or deposition, or may be set out in a separate subpoena. It shall set forth the items to be inspected either by individual item or by category and shall describe each item and category with reasonable particularity. The subpoena may specify the form or forms in which electronically or digitally stored information is to be produced.

(c) Issuance. A subpoena for the Superior Court may issue from the court in any county and for the District Court from the court in any district. The clerk shall issue a subpoena that is signed but otherwise in blank to a party requesting it, who shall complete it before service. An attorney admitted to the Maine Bar also may issue and sign a subpoena as an officer of the court.

(d) Service; Notice to Other Parties.

(1) *Service; Manner.* A subpoena may be served at any place within the state and by any person who is not a party and who is not less than 18 years of age, including the attorney of a party. Subpoenas shall be served on a party

to the action who is the subject of the subpoena in the manner prescribed by Rule 5(b) and on a non-party in the manner prescribed by Rule 4(d), whether or not represented by counsel, or by other means agreed to and confirmed in writing by the subject of the subpoena. If the person's or entity's attendance is commanded, then at the time of service of the subpoena the fees for one day's attendance and the mileage allowed by Title 16, Chapter 1, Subchapter 6 of the Maine Revised Statutes shall be tendered.

(2) *Service; Timing.*

(A) *Discovery or Pretrial Proceedings.* A subpoena issued for purposes of discovery or pretrial proceedings, as set forth in subdivision (a)(1)(A), (B), or (D) above, shall be served on the subject of the subpoena at least 14 days prior to the response date set forth in the subpoena.

(B) *Trial or Hearing.* A subpoena issued for purposes of hearing or trial, as set forth in subdivision (a)(1)(C) above, or that requests the production of tangible things at hearing or trial, as set forth in subdivision (a)(1)(D)(i) above, shall be served on the subject of the subpoena at least 14 days prior to the response date set forth in the subpoena or as soon as practicable if fewer than 14 days are available.

(3) *Notice to Other Parties.* A copy of a subpoena shall be served on each party to the action as soon as practicable after the serving party receives notice of the effective service made on the subject of the subpoena or, in discovery or pretrial proceedings, at least 10 days before the response date, whichever is earlier, but the court on an *ex parte* application and for good cause shown may prescribe a shorter notice.

(e) Duties in Issuing and Serving a Subpoena.

(1) *Undue Burden or Expense.* The party or the attorney responsible for the issuance and service of a subpoena shall take reasonable steps to comply with this rule and avoid imposing undue burden or expense on a person or entity subject to that subpoena.

(2) *Command to Produce Documents and Tangible Things or to Permit Entry Upon Land; Rights of Other Parties*. With respect to a command to produce documents or tangible things or to permit entry upon land for

inspection and other purposes, as set forth in subdivision (a)(1)(D) above, the serving party shall take reasonable steps to ensure that each party to the action, or someone acting on that party's behalf, has the same opportunity to inspect, copy, test, sample, enter, measure, survey, and/or photograph the requested documents, tangible things, land, and/or property as the serving party. If the serving party allows the subject of the subpoena to provide copies of the requested documents in lieu of making the original documents available for inspection and copying, the serving party shall promptly provide each party to the action with copies of all documents provided by the subject of the subpoena, unless otherwise ordered by the court.

(3) *Privileged or Protected Documentary Evidence.* If a party issues a subpoena that the party or the party's attorney knows seeks the production of documentary evidence that may be protected from disclosure by a privilege, confidentiality protection, or privacy protection under law, rule, or order, the party shall include with the subpoena a signed authorization for the release of the information or a court order allowing production. If there is no authorization or court order, then the issuing party, before or after serving the subpoena but before the time for response, shall confer in good faith with the subject of the subpoena in an attempt to reach agreement about production, and, if the agreement includes a court order, then the party who issued the subpoena shall submit the agreed, proposed order to the court for approval.

If no agreement is reached, the issuing party shall follow the procedures set forth in subdivision (h) below to obtain a court order for the disputed evidence. The letter shall contain a statement of the basis for seeking production of the documentary evidence that may be privileged or protected and shall be accompanied by a copy of the subpoena. Upon receipt of the letter, the clerk shall set the matter for in-person, video, or telephonic conference and issue a notice of in-person, video, or telephonic conference. The notice shall state the date and time of the in-person, video, or telephonic conference and direct the party from whom the documentary evidence is sought to submit the documentary evidence subject to the subpoena for *in camera* review by the court or to adequately explain in writing any reasons for a failure to submit the documentary evidence for *in camera* review. Following the clerk's issuance of a hearing notice, the serving party shall serve a copy of the notice and the letter, together with the subpoena if not already served, on the subject of the subpoena in the manner prescribed by this rule for serving a subpoena.

Upon receipt of the conference notice, the person or entity to whom the subpoena is directed shall either submit the documentary evidence subject to the subpoena for *in camera* review by the court or provide, in writing, reasons for the failure to submit the documentary evidence for *in camera* review before the date of the conference. After the conference, the court may issue any order necessary to protect any person or entity's privileges, confidentiality protections, or privacy protections under law, rule, or order.

(f) Duties in Responding to a Subpoena.

(1) *Objections.* A person or entity responding to a subpoena may object to it pursuant to subdivision (g) below on the grounds set forth in subdivisions (f)(2)(D), (f)(2)(E), (f)(3)(A), (i)(2), or (i)(3) below or for noncompliance with this rule.

(2) *Command to Produce Documents and Tangible Things or to Permit Entry Upon Land.* With respect to a command to produce documents or tangible things or to permit entry upon land for inspection and other purposes, as set forth in subdivision (a)(1)(D) above, a responding person or entity:

(A) need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial;

(B) shall produce the requested documents or tangible things as they are kept in the usual course of business or shall organize and label them to correspond with the categories requested in the subpoena;

(C) shall produce electronically or digitally stored information in the form requested in the subpoena or in a form or forms in which the information is ordinarily maintained or that is reasonably usable;

(D) need not produce the same electronically or digitally stored information in more than one form unless ordered by the court;

(E) need not provide electronically or digitally stored information from sources that are not reasonably accessible because of undue burden or expense and may object to the subpoena on that basis. The person or entity from whom the electronically or digitally stored information is sought must show that it is not reasonably accessible because of undue

burden or expense. If that showing is made, the court may nonetheless order production if the serving party shows a substantial need for the information in electronic form that cannot otherwise be satisfied without undue hardship, considering the limitations and remedies of Rule 26B(c). The court may specify reasonable conditions for the production and shall impose on the party that served the subpoena the reasonable expense of producing such electronically or digitally stored information; and

(F) shall permit each party to the action, or someone acting on that party's behalf, the same opportunity to inspect, copy, test, sample, enter, measure, survey, and/or photograph the requested documents, tangible things, land, and/or property as the serving party.

(3) *Claiming Privilege or Protection.*

(A) *Information Withheld.* When information subject to a subpoena is withheld on the basis of privilege, immunity from discovery, trial preparation materials, confidentiality protection, or privacy protection under law, rule, or order, the objection shall be made expressly on those grounds and shall be supported by a description of the nature of the documents or tangible things not produced that is sufficient to enable the serving party to contest the objection. The objection shall be presented in the manner prescribed by subdivision (g) below.

(B) *Information Mistakenly Produced.* If information produced in response to a subpoena is subject to a claim of privilege, immunity from discovery, trial preparation materials, confidentiality protection, or privacy protection under law, rule, or order, the person making the claim shall notify any party that received the information of the claim and the basis for it. After being notified, recipients shall promptly return, sequester, or destroy the specified information and any copies, as directed by the producing party; shall not use or disclose the information until the claim is resolved by agreement or by the court; and shall take reasonable steps to retrieve the produced information if disclosed before notification of the claim. The claim may be resolved by any party to the action or by the person making the claim in the manner prescribed by subdivision (g) below. The subject of the subpoena who produced the information must preserve the information until the claim is resolved, regardless of who asserted the claim.

(g) Objection to a Subpoena.

(1) *Manner of Objection for Parties.*

(A) Without Motion Unless By Permission. No written motion shall be filed objecting to a subpoena of a party without prior approval of the court. In lieu of seeking permission to file a motion, the objecting person, entity, or party may, no later than 7 days after service of a subpoena on that person, entity, or party,

(i) serve a letter on the serving party setting forth the objection; and

(ii) make a good-faith effort to confer in person or by telephone to attempt to resolve the objection by agreement.

If an objection is made to a subpoena served for purposes of pretrial or discovery proceedings, as set forth in subdivisions (a)(1)(A), (B) or (D) above, the subpoena shall not be enforced except pursuant to an order of a justice or judge under this rule.

If an objection is made to a subpoena issued for appearance or production at a hearing or trial, as set forth in subdivisions (a)(1)(C) or (D)(i) above, then the subject of the subpoena is required to attend and produce as commanded unless otherwise ordered by a justice or judge.

Objections made during deposition testimony that was compelled by subpoena shall be addressed as provided in Rule 30.

(B) Court Involvement. Except as provided for in subdivision (C) below, if the court has not authorized the filing of a motion and the objection is not resolved by agreement, then the person or entity subject to the subpoena, the serving party, or any other party to the action may file a letter with the clerk of the court in which the action is pending requesting an in-person, video, or telephonic conference with a justice or judge as set forth in Rule 7(b)(1)(C). The court may order that a motion to quash be filed if greater formality is required.

(i) The letter shall identify the title of the action, the name of the court in which it is pending, and its civil action number; identify the particular appearance, production, or inspection commanded to which there is objection; state the objection and relief sought without argument or citation; and attach a copy of the subpoena at issue.

(ii) The letter shall constitute a representation to the court, subject to Rule 11, that a good-faith effort to resolve the objection has been attempted unsuccessfully.

(iii) The letter shall be served by delivering a copy to the person subject to the subpoena and all parties to the action as provided in Rule 5(b).

(iv) A conference may be held as provided in Rule 7(b)(1)(D).

(C) Objection to Certain Trial or Hearing Subpoenas. If a party to an action objects to a trial or hearing subpoena that has been served less than 14 days prior to the trial or hearing date, the party shall file a motion to quash with the court. The motion must state and certify that prior to filing the motion the party has made a good faith effort to resolve the objection and must describe these good faith efforts.

(2) *Manner of Objection for Nonparties.* To raise an objection, a person or entity that is not a party to the case that has been served with a subpoena for a pretrial or discovery proceeding, or for a trial or hearing, shall file a motion to quash the subpoena with the court. Before filing the motion, the person or entity objecting to the subpoena must make a good faith effort to resolve the objection with the party issuing the subpoena. The motion must state and certify that the person or entity objecting to subpoena has made a good faith effort to resolve the objection and must describe these efforts.

(h) Enforcement of a Subpoena. The procedure in this subdivision to compel compliance with a duly served subpoena is an alternative to contempt proceedings under subdivision (j)(1) below and Rule 66, which may be initiated by the serving party instead. No written motion other than a motion for contempt shall be filed seeking enforcement of a subpoena without prior approval of the court.

(1) *Alternative Enforcement Method.* To compel compliance with a duly served subpoena when a person or entity has failed to obey and has not objected to the subpoena pursuant to subdivision (g) above, the serving party may, within a reasonable time after the date for compliance with the subpoena or the receipt of an insufficient response, whichever is earlier,

(A) serve a letter on the subject of the subpoena demanding compliance; and

(B) make a good-faith effort to confer in person or by telephone to attempt to obtain compliance by agreement.

(2) *Court Involvement.* If the court has not authorized a motion and the compliance deficiency is not resolved by agreement, the serving party or any other party to the action may file a letter with the clerk of the court in which the action is pending requesting an in-person, video, or telephonic conference with the assigned single justice or judge as set forth in Rule 7(b)(1)(C).

(A) The letter shall identify the title of the action, the name of the court in which it is pending, and its civil action number; identify the particular appearance, production, or inspection commanded for which enforcement is sought; state the basis for enforcement and relief sought without argument or citation; and attach a copy of the subpoena at issue.

(B) The letter shall constitute a representation to the court, subject to Rule 11, that a good-faith effort to resolve the objection has been attempted unsuccessfully.

(C) The letter shall be served by delivering a copy to the person subject to the subpoena and all parties to the action as provided in Rule 5(b).

(D) A conference may be held as provided in Rule 7(b)(1)(D).

(i) Court Action on Motion, Objection or Enforcement Letter. The assigned single justice or any judge may issue an order on the basis of a motion or on the basis of a letter filed pursuant to subdivision (g)(1), (g)(2), or (h)(2)

above with or without a hearing or telephone conference, at the court's discretion.

(1) *Enforce.* If warranted, the justice or judge may order compliance pursuant to the terms specified in the subpoena.

(2) *Quash or Modify.* The justice or judge may quash or modify the subpoena in its discretion if it

(A) fails to allow a reasonable time for compliance;

(B) requires a resident of this state to attend a deposition outside the county wherein that person resides and to travel a distance of more than 150 miles one way from that person's residence;

(C) requires a nonresident of the state to attend a deposition outside the county wherein that person is served with a subpoena and to travel a distance of more than 150 miles one way from the place of service;

(D) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(E) subjects a person or entity to undue burden in complying with the subpoena.

(3) *Enforce with Protective Conditions.*

(A) Applicability. The justice or judge may order appearance or production upon protective conditions if a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information;

(ii) requires the testimony, documents, tangible things, or information of an expert witness who was not retained by a party to testify and that resulted from the expert's study, examination, or analysis performed other than at the request of a party and that do not describe events, occurrences, or facts in dispute;

(iii) requires a resident of this state who is not a party to the action or an officer of a party to the action to incur substantial expense to attend trial outside the county wherein that person resides and to travel a distance of more than 150 miles one way from that person's residence; or

(iv) requires a nonresident of the state who is not a party to the action or an officer of a party to the action to incur substantial expense to attend trial outside the county wherein that person is served with a subpoena and to travel a distance of more than 150 miles one way from the place of service.

(B) Requirements. Appearance or production upon protective conditions may be ordered only if the serving party (i) proves a substantial need for the testimony, inspection, documents, or tangible things that cannot otherwise be satisfied without undue hardship, and (ii) in appropriate circumstances, pays reasonable compensation to the person or entity served with the subpoena, which in the case of an expert witness is agreed by the expert witness or approved by the court.

(j) Contempt and Sanctions.

(1) Failure by any person or entity to obey a duly served subpoena may be deemed contempt of the court in the county or district where the action is pending. Punishment for contempt under this paragraph shall be in accordance with Rule 66 and 16 M.R.S. § 102. Alternatively, the serving party may seek to enforce a subpoena pursuant to subdivision (h) of this rule.

(2) The court may impose an appropriate sanction upon a party, attorney, person, or entity in breach of the duties set forth in this rule, which may include, but is not limited to, lost earnings, reasonable attorney fees, and other reasonable expenses incurred in seeking enforcement of the subpoena or protection from it.

Advisory Note – _____ 2019

Rule 45 is repealed and replaced in its entirety.

Subdivision (a) includes provisions regarding the scope of a subpoena and a provision applying particularly to subpoenas directed to parties in the action.

Subdivision (b) prescribes the form of the subpoena.

Subdivision (c) provides for the issuance of a subpoena from the Superior and District Courts.

Subdivision (d) governs the manner and timing of service of subpoenas and the provision of notice to other parties.

Subdivision (e) requires those responsible for the issuance and service of a subpoena to avoid imposing undue burden or expense on the subject of the subpoena and includes provisions regarding commands to produce documents and tangible things and to permit entry on land, and the treatment of privileged or protected documentary evidence.

Subdivision (f) describes the duties in responding to a subpoena.

Subdivision (g) specifically describes the manner of objecting to a subpoena and indicates when the court will be involved in ruling on an objection. The rule prescribes different procedures for parties and nonparties, and for parties further distinguishes between objections to pretrial and discovery subpoenas, and trial subpoenas served less than 14 days before trial.

Subdivision (h) provides a process for enforcing a subpoena that is an alternative to moving for contempt.

Subdivision (i) authorizes court action on an objection or enforcement letter.

Subdivision (j) provides for contempt and sanctions.

29. Rule 53 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 53. REFEREES

. . . .

(e) Report.

. . . .

(2) *In Non-jury Actions.* In an action where there has been a reference by agreement, the referee's conclusions of law and findings of fact shall be subject to the right of the parties to object to acceptance of the referee's report. On waiver by all parties of the right to object to acceptance of the referee's report, the court shall forthwith enter judgment on the referee's report. Except where such waiver occurs, any party may within 7 days after being served with notice of the filing of the report serve written objections upon the other parties. Application to the court for action upon the report and upon objections thereto, if any have been served, shall be by motion and upon notice as prescribed in Rule 7(b)(2). The court shall adopt the referee's findings of fact unless clearly erroneous. Except as otherwise provided in this paragraph (2), the court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions. If no objections have been timely filed, the court shall forthwith enter judgment on the referee's report.

Advisory Note – _____ 2019

Subdivision (e)(2) of Rule 48 is amended to change a deadline to use a 7-day increment and update a cross-reference.

30. Rule 54 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 54. JUDGMENTS; COSTS

(b) Judgment Upon Multiple Claims or Involving Multiple Parties; Attorney Fees.

. . . .

(3) When final judgment has been entered on all claims except a claim for attorney fees, an application for the award of attorney fees shall be filed within 63 days after entry of judgment if no appeal has been filed. If an appeal has been filed, the application may be filed and acted upon in the trial court at any time after entry of the judgment appealed from and in any case shall be filed not later than 28 days after final disposition of the action. An application for attorney fees shall ordinarily be acted upon by the justice or judge who rendered the judgment on the merits.

Advisory Note – _____ 2019

Subdivision (b)(3) of Rule 54 is amended to change deadlines to use 7-day increments.

31. Rule 55 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 55. DEFAULT

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default, except that the clerk may not enter a default in a foreclosure action or in a collection action brought by a "debt buyer," as that term is defined in 32 M.R.S. § 11002.

(b) Judgment. Subject to the limitations of Rule 54(c), judgment by default may be entered as follows:

(1) *By the Clerk.* When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk shall, upon request of the plaintiff and upon affidavit of the amount due and affidavit that the defendant is not a minor or incompetent person, enter judgment for that amount and costs against the defendant, if the defendant has been defaulted and has failed to appear. The clerk may not, however, enter a default judgment in a foreclosure action or in a collection action brought by a "debt buyer," as that term is defined in 32 M.R.S. § 11002.

(2) *By the Court.* In all other cases, the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against a minor or incompetent person unless represented in the action by a guardian, guardian ad litem, conservator, or other such representative who has appeared therein.

(A) If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment in the same manner and subject to the same response requirements as for motions pursuant to Rule 7; provided that, if the reason for default is a party's failure to appear at trial, such notice need be served only if ordered by the court.

(B) If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall in the Superior Court accord a right of trial by jury to the plaintiff if the plaintiff so requests.

(3) *Foreclosure Actions*. No default judgment shall be entered in a foreclosure action filed pursuant to Title 14, Chapter 713 of the Maine Revised Statutes except after review by the court and determination that (i) the service and notice requirements of 14 M.R.S. § 6111 and these rules have been strictly performed, and (ii) the plaintiff has properly certified proof of ownership of the mortgage note and produced evidence of the mortgage note, the mortgage, and all assignments and endorsements of the mortgage note and the mortgage.

(4) *Debt Buyer Collection Actions*. No default judgment may be entered in a collection action brought by a "debt buyer," as that term is defined in 32 M.R.S. § 11002, except after review by the court and determination that the plaintiff has strictly complied with all applicable provisions of law, including the Maine Fair Debt Collection Practices Act set forth in Title 32.

(5) *Judgment on Negotiable Obligation.* No judgment by default shall be entered upon a claim based on a negotiable instrument or other negotiable obligation unless an original or copy of the instrument or obligation is filed with the clerk or unless the court for cause shown shall otherwise direct on such terms as it may fix.

(6) *Affidavit Required.* Notwithstanding the preceding provisions of this rule, no judgment by default shall be entered until the filing of an affidavit made by the plaintiff or the plaintiff's attorney, on the affiant's own knowledge, setting forth facts showing that the defendant is not a person in military service as defined in the "Service Members Civil Relief Act" of 2003, as amended, except upon order of the court in accordance with that Act, and setting forth facts showing that venue was properly laid at the place where the action was brought.

(c) Setting Aside Default. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

(d) Plaintiffs, Counterclaimants, Cross-Claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party that has pleaded a cross-claim or counterclaim.

(e) Collections Fee. A request or motion for a default that seeks a judgment for a sum certain, or for a sum that can, by computation of costs and interest, be made certain, shall be accompanied by a fee set in the Court Fees Schedule which shall be paid when the request or motion is filed. The fee payment requirement shall apply only when a judgment of $10,000 or more is sought.

(f) Notice Required. An application for default or default judgment must include a statement that a copy has been sent to the party against whom a judgment is sought at the address noted on that party's entry of appearance (or if appearing by representative, the appearance of the party's representative), or if none has been filed, the address where the party was served. If a party has been served by alternative service, notice is complete upon mailing the copy to that alternative authorized address, provided that if service was approved for by publication, no notice is required to be sent.

Advisory Note – ____ 2019

Subdivision (a) is amended to preclude clerks from entering defaults in foreclosure and debt buyer collection actions.

Subdivision (b) is amended to preclude clerks from entering default judgments in foreclosure and debt buyer collection actions. The provision regarding foreclosure actions formerly in subdivision (a) is moved and amended to become subdivision (b)(3), applicable to the entry of default judgments. A new subdivision (b)(4) is added to apply to debt buyer collection actions.

Former subdivisions (b)(3) and (b)(4) are renumbered as (b)(5) and (b)(6).

Subdivision (f), requiring the provision of notice of an application for default or default judgment, is added.

All other amendments are for stylistic purposes.

32. Rule 56 of the Maine Rules of Civil Procedure is repealed and replaced with the following:

RULE 56. SUMMARY JUDGMENT

(a) Availability. Motions for summary judgment are generally available in Track B and Track C civil cases.

(b) Limitations on Availability.

(1) *Track A Cases.* Motions for summary judgment are available in Track A civil cases only upon written request filed with the court and the prior approval of the court using the process set forth in Rule 7(b)(1).

(2) *Family Matters.* Motions for summary judgment may not be filed in family matters of any kind.

(3) *Foreclosure Actions.* No summary judgment shall be entered in a foreclosure action filed pursuant to Title 14, Chapter 713 of the Maine Revised Statutes except after review by the court and determination that (i) the service and notice requirements of 14 M.R.S. § 6111 and these rules have been strictly performed or do not apply; (ii) the plaintiff has properly certified proof of ownership of the mortgage note and produced evidence of the mortgage note, the mortgage, and all assignments and endorsements of the mortgage note and the mortgage; and (iii) mediation, when required, has been completed or has been waived or the defendant, after proper service and notice, has failed to appear or respond and has been defaulted or is subject to default. In actions in which mediation is mandatory, has not been waived, and the defendant has appeared, the defendant's opposition pursuant to subdivision (f) below to a motion for summary judgment shall not be due any sooner than 7 days following the filing of a mediator's report or entry of an order terminating mediation.

(4) *Debt Buyer Collection Actions.* A party may move for summary judgment in a collection action brought by a "debt buyer," as that term is defined in 32 M.R.S. § 11002, only upon written request filed with the court and the prior approval of the court using the process set forth in Rule 7(b)(1).

(c) Timing. Except upon written request filed with the court and the prior approval of the court, a motion for summary judgment may be filed at any time during the period starting 28 days after the date of the filing of the complaint and ending 21 days after the discovery deadline.

(d) Standard. The court shall grant summary judgment on a claim or defense where

(1) there is no genuine dispute as to any material fact and

(2) a party is entitled to judgment on the claim or defense or a part thereof as a matter of law.

If there are no genuine disputes as to any material facts and a party opposing a motion for summary judgment (an "opposing party") is entitled to judgment as a matter of law, a summary judgment may be rendered against the party that filed the motion for summary judgment (the "moving party").

(e) Motion for Summary Judgment.

(1) *Form of Motion.* A motion for summary judgment must

(A) Be submitted in writing,

(B) Comply with Rule 7(e)(1) and (2),

(C) Include a memorandum of law that complies with Rule 7(e)(1) and (3)(B),

(D) Clearly identify the pleading to which it is directed and specify the count to which it is directed, and

(E) Include, in addition to the notice required by Rule 7(b)(2)(A), a notice that (i) opposition to the motion must comply with the requirements of Rule 56(f) including specific responses to each numbered statement in the moving party's statement of material facts, with citations to points in the record or supporting documents filed with the opposition; and (ii) not complying with Rule 56(f) in opposing the motion may result in entry of judgment without hearing.

(2) *Support for the Motion.* The moving party must support its motion for summary judgment by submitting the following:

(A) Statement of Undisputed Material Facts. This document shall set out a short and concise statement of the material facts about which the moving party contends there is no genuine dispute.

(i) Limitation on Facts. Except upon written request filed with the court and the prior approval of the court, there shall be no more than 25 asserted facts for Track B cases and 50 asserted facts for Track C cases. Each fact shall be stated in a separately numbered paragraph. Each paragraph may contain only one fact.

(ii) Citations Required. Each paragraph must be followed by a precise citation to the portions of the supporting documents that establish the fact or demonstrate that the fact is undisputed. The citation shall identify the document cited and shall specify the pages and paragraphs or lines thereof.

(B) Supporting Documents. The moving party must attach to the statement of material facts those portions of deposition transcripts, answers to interrogatories, answers to requests for admissions, affidavits from persons with personal knowledge of pertinent facts, or other documents that provide support for the statement of material facts.

(i) Affidavits. All affidavits must be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. Sworn or certified copies of all documents or parts of documents referred to in an affidavit shall be attached to the affidavit.

(ii) Other Documents. All supporting documents other than affidavits must be sworn or certified copies of the originals.

(f) Opposing a Motion for Summary Judgment.

(1) *Opposing Memorandum.* A party opposing the motion must file a memorandum opposing the moving party's motion in compliance with Rule 7(c) and (e)(1) and (3).

(2) *Opposing Statement of Material Facts.* In addition, the opposing party must respond to each paragraph of the moving party's statement of undisputed material facts by admitting, denying, or qualifying each fact. Failure to do so may result in a court's determination that all material facts in the moving party's statement that are sufficiently supported will be deemed admitted for purposes of the motion.

In the opposing statement of material facts, the opposing party shall create a document reproducing the text of the facts asserted by the moving party and, immediately following each statement, shall state whether the opposing party admits, denies, or qualifies the statement.

(A) Admitted Facts. If the opposing party admits a statement, no further response to that statement is required or allowed.

(B) Denied and Qualified Facts. If the opposing party denies or qualifies a statement, the denial or qualification must be followed by a precise citation to the portion of any supporting documents that negate the fact or demonstrate that the fact is disputed or qualified. The citation shall identify the document cited and shall specify the pages and paragraphs or lines thereof.

(C) Supporting Documents. The opposing party must attach to its response to the moving party's statement of material facts any additional supporting documents it relies on, all of which must comply with subdivision (e)(2)(B) above.

(3) *Statement of Additional Material Facts.* In addition to admitting, denying, or qualifying each paragraph of the moving party's statement, the opposing party may file a short and concise statement of additional material facts.

(A) Limitation. Except upon written request filed with the court and the prior approval of the court, the opposing party may provide no more than 25 additional facts for Track B cases and 50 additional facts for Track C cases. Each fact shall be stated in a separately numbered paragraph. Each paragraph may contain only one fact.

(B) Citations Required. Each paragraph must be followed by a precise citation to the portions of the supporting documents that establish the fact. The citation shall identify the document and shall specify the pages and paragraphs or lines thereof.

(C) Supporting Documents. The opposing party must attach to the opposing statement of material facts any additional supporting documents it relies on, all of which must comply with subdivision (e)(2)(B) above.

(g) Replying to the Opposition to a Motion for Summary Judgment. A party replying to the opposition to a motion for summary judgment must do so within 14 days after the filing of the opposition.

(1) *Reply Memorandum.* The reply memorandum shall be a separate, short, and concise response, limited to addressing the additional facts submitted by the opposing party. It shall comply with Rule 7(e)(1) and (3) except upon written request filed with the court and the prior approval of the court.

(2) *Reply Statement of Material Facts.* If the opposing party has filed a statement of additional material facts, the moving party must create a document reproducing the text of the facts asserted by the opposing party and, immediately following each statement, shall state whether the moving party admits, denies, or qualifies the statement.

(A) Admitted Facts. If the moving party admits a statement, no further response to that statement is required or allowed.

(B) Denied and Qualified Facts. If the moving party denies or qualifies a stated fact, the denial or qualification must be supported by a citation to any supporting documents that negate the fact or demonstrate

that the fact is disputed or qualified. The citation shall identify the document and shall specify the pages and paragraphs or lines thereof.

(C) Supporting Documents. The opposing party must attach its response to the moving party's statement of material facts any additional supporting documents it relies on, all of which must comply with subdivision (e)(2)(B) above.

(h) Statements Lacking Citations to Supporting Documents. The court may disregard any statement of fact by any party not supported by a specific citation to one or more properly presented supporting documents. The court shall have no independent duty to search or consider any materials not specifically referenced in the parties' separate statement of facts.

(i) Motions to Strike Are Not Permitted. Motions to strike factual assertions, denials, or qualifications contained in a statement of material facts or in supporting documents filed pursuant to this rule are not permitted. If a party contends that the court should not consider a factual assertion, denial, or qualification, the party may set forth its objection either in its opposing statement or in its reply statement and shall refer to supporting legal authority. In deciding the motion for summary judgment, the court shall determine, based on the applicable law, whether to consider a factual assertion, denial, or qualification over a party's objection.

(j) Partial Summary Judgment. The court may grant partial summary judgment as to one or more claims or defenses. A summary judgment on issues of liability may be granted even when there are disputes as to damages or other relief.

(k) Facts Admitted for Purposes of Summary Judgment. Facts deemed admitted for purposes of summary judgment shall not be deemed admitted for purposes other than determining whether summary judgment is appropriate.

(l) Inability to Respond. When a party against whom a motion for summary judgment has been filed demonstrates, through affidavits stating the reasons why the party is unable to present facts essential to justify its opposition, that, despite due diligence, affidavits or other materials essential for opposition to the motion are unavailable, the court may, in the exercise of its discretion, grant a continuance to permit an opportunity to obtain

responsive material, through discovery or otherwise, or enter such other order as is just.

(m) Cross-Motions for Summary Judgment. A party against whom a motion for summary judgment has been filed may file a cross-motion for summary judgment, subject to the other provisions of this rule; the filing of a cross-motion does not relieve a party of the obligation to respond in accordance with this rule to the adversary party's motion.

(n) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney fees, and any offending party or attorney may be adjudged guilty of contempt.

(o) Requests for Modification: Requests for modifications to limitations on facts, pages, or deadlines must be made using the process set forth in Rule 7(b)(1).

Advisory Note – _____ 2019

Rule 56 is repealed and replaced in its entirety, primarily to impose presumptive limits on the materials submitted in support of, and in opposition to, a motion for summary judgment.

Subdivision (a) provides that summary judgment is generally available in Track B and Track C cases.

Subdivision (b) provides limitations on the availability of summary judgment. It is available in Track A cases only with permission of the court and is not available in family matters of any kind. Special provisions are included for foreclosure actions and debt buyer collection actions.

Pursuant to subdivision (c), motions must be filed no earlier than 28 days after the filing of the complaint and no later than 21 days after the discovery deadline, unless otherwise ordered by the court upon a written request.

Subdivision (d) provides the standard for granting summary judgment and authorizes the entry of a summary judgment against the moving party if there are no disputes of material facts and the opposing party is entitled to judgment as a matter of law.

Subdivision (e) prescribes the form and manner of moving for summary judgment. New limits include that, unless authorized by the court upon a written request, the motion and memorandum must comply with Rule 7(e), no more than 25 facts may be asserted in a Track B case, and no more than 50 facts may be asserted in a Track C case.

Subdivision (f) prescribes the form and manner of opposing a motion for summary judgment. New limits include that, unless authorized by the court upon a written request, the memorandum must comply with Rule 7(c) and (e)(1) and (3), no more than 25 additional facts may be asserted for a Track B case, and no more than 50 facts may be asserted in a Track C case.

Subdivision (g) prescribes the form and manner of replying to an opposition to a motion for summary judgment. The reply memorandum must comply with Rule 7(e)(1) and (3) unless otherwise authorized by the court upon written request.

Subdivision (h) authorizes the court to disregard statements not supported by a citation to properly presented supporting documents.

Subdivision (i) prohibits motions to strike and authorizes the court to consider whether a factual assertion or denial may be considered over a party's objection when it decides the motion.

Subdivision (j) authorizes the entry of a partial summary judgment.

Subdivision (k) provides that admitted facts are admitted only for the purposes of summary judgment.

Subdivision (l) authorizes the court to grant a continuance or enter such order as is just when, despite due diligence, essential materials are not yet available.

Subdivision (m) authorizes cross-motions for summary judgment and makes clear that filing a cross-motion does not eliminate the need to oppose the initial motion.

Subdivision (n) pertains to affidavits made in bad faith and is identical to former Rule 56(g).

Subdivision (o) provides that requests for modifications to limitations on facts, pages, or deadlines must be made using the process set forth in Rule 7(b)(1).

33. Rule 57 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 57. DECLARATORY JUDGMENTS

The procedure for obtaining a declaratory judgment pursuant to 14 M.R.S. §§ 5951-5963 shall be in accordance with these rules, and the right to trial by jury is preserved under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

Advisory Note – _____ 2019

Rule 57 is amended to update the statutory citation to reference the M.R.S. instead of the M.R.S.A.

34. Rule 59 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 59. NEW TRIALS: AMENDMENT OF JUDGMENTS

. . . .

(c) Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party shall serve opposing affidavits within 21 days after the entry of judgment, which period may be extended for an additional period either by the justice or judge before whom the action has been tried for good cause shown or by the parties by written stipulation. Such justice or judge may permit reply affidavits.

(d) On Initiative of Court. Not later than 14 days after entry of judgment the justice or judge before whom the action has been tried without motion of a party may order a new trial for any reason for which the justice or judge might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case the court shall specify in the order the grounds therefor.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment, together with the appropriate fee, shall be filed not later than 14 days after entry of the judgment. A motion for reconsideration of the judgment shall not be allowed or accepted for filing.

Advisory Note – _____ 2019

Rule 59 is amended to change the deadlines in subdivisions (c) and (d) to use 7-day increments and to provide in subdivision (e) that a motion for reconsideration of the judgment shall not be allowed or accepted for filing and will no longer be treated as a motion to alter or amend the judgment.

35. Rule 62 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

. . . .

(f) Continuance of Attachment. An attachment of real or personal property or an attachment on trustee process or a bond given to vacate any such attachment or to release the defendant from arrest on capias writ shall, unless dissolved by operation of law, continue during the time within which an appeal may be taken from the judgment and during the pendency of any appeal. When a judgment has become final by expiration of the time for appeal, by dismissal of an appeal, or on certificate of decision from the Superior Court or Law Court, any such attachment or bond shall continue for 63 days if the judgment is for the plaintiff but shall be dissolved forthwith if the judgment is for the defendant.

Advisory Note – _____ 2019

Rule 62 is amended to change the deadline in subdivision (f) to use a 7-day increment.

36. Rule 66 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 66. CONTEMPT PROCEEDINGS

. . . .

(b) Summary Proceedings.

. . . .

(3) *Punitive Sanctions.* The court may impose a punitive sanction that is proportionate to the conduct constituting the contempt. In a summary proceeding, the court may impose a punitive sanction that consists of either imprisonment for a definite period not to exceed 91 days or a fine of a specified amount not to exceed $5000 or a combination of imprisonment and fine.

. . . .

(c) Plenary Proceedings for Punitive Sanctions.

. . . .

(2) *Procedure.* A proceeding under this subdivision shall proceed as provided by the Maine Rules of Criminal Procedure for the prosecution of a Class D crime, except as hereinafter provided.

. . . .

(D) Trial. The date of trial shall allow the alleged contemnor a reasonable time for the preparation of a defense. Trial shall be to the court, except that, if the court concludes that in the event of an adjudication of contempt a punitive sanction of imprisonment of more than 91 days or a serious punitive fine may be imposed, trial shall be to a jury unless waived by the alleged contemnor.

(d) Plenary Proceedings for Remedial Sanctions.

. . . .

(2) *Procedure.*

. . . .

(C) Service. The contempt subpoena shall be served with a copy of the court order or of the motion and any supporting affidavit upon the alleged contemnor. Service upon an individual shall be made in hand by an officer qualified to serve civil process. Service upon a party that is not an individual shall be made by any method by which service of a civil summons may be made. Service shall be completed no less than 14 days before the hearing unless a shorter time is ordered by the court.

Advisory Note – _____ 2019

Rule 66 is amended to increase the possible duration of imprisonment as a sanction for contempt from 30 to 91 days, to change deadlines to use 7-day increments, and to make a stylistic change not affecting the substance of the rule.

37. Rule 67 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 67. DEPOSIT IN COURT

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing. In the Superior Court, money paid into court under this rule shall be deposited and withdrawn in accordance with the provisions of 4 M.R.S. § 556. In the District Court, money paid into court under this rule shall be deposited in such depository as the court having custody shall designate (which designation shall be minuted on the docket) and shall be withdrawn therefrom upon order of the clerk, countersigned by any judge.

Advisory Note – _____ 2019

Rule 67 is amended to update the statutory citation to reference the M.R.S. instead of the M.R.S.A.

38. Rule 68 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 68. OFFER OF JUDGMENT

At any time more than 14 days before the trial begins or within such shorter time as the court may approve, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. If within 14 days after the service of the offer or within such shorter time as the court may order the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 14 days, or such shorter time as the court may approve, before the commencement of hearings to determine the amount or extent of liability.

Advisory Note – _____ 2019

Rule 68 is amended to change deadlines to use 7-day increments and to make a stylistic change not affecting the substance of the rule.

39. Rule 69 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 69. EXECUTION

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. No execution running against the body shall be issued unless, where the law expressly permits such execution, it is so ordered by the court after motion and hearing for good cause shown. In addition to the procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution, as provided by law, the judgment creditor or a successor in interest when that interest appears of record, may obtain discovery from any person in the manner provided in these rules; provided that discovery may be obtained against the judgment debtor only in connection with a disclosure proceeding pursuant to 14 M.R.S. §§ 3120-3136 and only upon the order, entered on motion for good cause shown, of the District Court in the division in which such proceeding is pending.

Advisory Note – _____ 2019

Rule 69 is amended to update the statutory citation to reference the M.R.S. instead of the M.R.S.A.

40. Rule 76C of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 76C. REMOVAL TO SUPERIOR COURT FOR JURY TRIAL

(a) Notice of Removal to the Superior Court for Jury Trial. By electing to file a cause of action in the District Court, the plaintiff is deemed to have waived the right to remove the action to the Superior Court for jury trial. Except as otherwise provided in these rules, a party other than the plaintiff to a civil action or proceeding in the District Court may remove that action to the Superior Court for jury trial in the county in which the division of the District Court is located by filing a notice of removal, serving a copy of the notice upon all other parties, and paying to the clerk of the District Court the jury fee. Parties joined as defendants may file jointly or separately for removal. The notice shall be filed and fee paid no later than 35 days after the time for serving the answer to a complaint or other pleading to which an answer is allowed under Rule 7(a) or reply to a counterclaim or at the time for appearance if no written answer is required.

(b) Proceedings for Removal. Upon the filing of the notice of removal and payment of the jury fee required by subdivision (a) of the rule, the clerk shall thereupon file with the Superior Court the record as provided in Rule 76F(a) for appeals, provided that the District Court shall first determine any motions for approval of attachment, trustee process or replevin, pending when the notice of removal was filed. Any order of the District Court entered on such a motion, or any other order of the District Court entered before removal, shall remain in force until modified by the Superior Court. If the party giving notice of removal does not comply with the requirements of this rule, the action shall proceed in the District court as if no notice had been filed.

(c) Proceedings in the Superior Court. Removal shall be deemed complete upon receipt of the record in the Superior Court. The clerk of the Superior Court shall send each counsel of record or unrepresented party a written notice of the docketing of receipt of the record, the Superior Court docket number, and the date of receipt of the record. All filings thereafter shall be made in the Superior Court, and the action shall be prosecuted in the Superior Court as if originally commenced therein. The removal to the Superior Court for trial by jury may be reviewed by the Superior Court on motion. Upon

a finding by the Superior Court of improvident removal, the action shall be remanded to the District Court and no fees previously paid shall be refunded.

(d) Existing Scheduling Order to Remain in Effect. Upon removal to the Superior Court for a jury trial, if an initial or modified scheduling order has been entered in the District Court pursuant to Rule 16, that order remains in effect unless superseded or modified in the Superior Court.

(e) Initial Scheduling Order or Case Management Conference. Upon receiving the case, a single justice shall be assigned to the case, and, if no scheduling order is in effect, the single justice shall either enter an initial scheduling order or order the parties to attend a case management conference to determine the future course of the proceedings.

(1) *Contents.* An order to attend a case management conference shall, at a minimum, identify the issues to be addressed at the conference, the deadlines to be established at the conference, and the responsibilities of the parties in advance of the conference.

(2) *Attendance of Conference.* All unrepresented parties and all lead trial counsel and local counsel for each represented party shall attend the case management conference in person unless the court authorizes attendance by other means.

(3) *Rules 16 and 16A Applicable.* The case management procedures of Rules 16 and 16A shall apply. The single justice may issue a case management order that modifies or supersedes a scheduling order issued by the District Court.

Advisory Note – _____ 2019

Subdivision (a) of Rule 76C is amended to provide that a plaintiff, by electing to file a cause of action in the District Court, is deemed to have waived the right to remove the action to the Superior Court for a jury trial. It is further amended to authorize any other party to remove the matter, but that party must provide notice of removal of the matter and pay the fee within 35 days after the date that the answer was due.

Subdivision (b) is amended only to make a stylistic change not affecting the substance of the rule.

Subdivisions (d) and (e) are added to provide that any issued scheduling order remains in effect unless superseded or modified in the Superior Court, that a single justice will be assigned to the case immediately, and that a scheduling order must be issued or a case management conference scheduled if no scheduling order is yet in place. Subdivision (e)(3) provides that the case management procedures of Rules 16 and 16A apply to the matter going forward.

41. Rule 76D of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 76D. APPEAL TO THE SUPERIOR COURT

This rule applies only to appeals from District Court judgments which, by law, may be appealed to the Superior Court. It does not apply to direct appeals from the District Court to the Law Court. Such appeals are governed by the Maine Rules of Appellate Procedure.

Whenever a judgment of the District Court is by law reviewable by the Superior Court, an aggrieved party may appeal from a judgment of the District Court to the Superior Court in the county in which the division of the District Court entering judgment is located. The time within which an appeal may be taken shall be 28 days from the entry of the judgment appealed from, except that: (1) upon a showing of excusable neglect, the court in any action may extend the time for filing the notice of appeal not exceeding 28 days from the expiration of the original time herein prescribed; and (2) if a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days of the date on which the first notice of appeal was filed, or within the time otherwise herein prescribed, whichever period last expires. . . .

Advisory Note – _____ 2019

Rule 76D is amended to change deadlines to use 7-day increments and to make a stylistic change not affecting the substance of the rule.

42. Rule 76F of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 76F. RECORD ON APPEAL TO THE SUPERIOR COURT

(a) Record to Be Filed in Superior Court. When a District Court matter has been appealed to the Superior Court as authorized by statute, the clerk of the division shall file the record with the Superior Court. The original papers and exhibits filed in the District Court and a copy of the docket entries prepared by the clerk of the District Court, together with any transcript made pursuant to Rule 76H of these rules, shall constitute the record on appeal in all cases. A party must make advance arrangements with the clerk for the transportation and receipt of documents or exhibits of unusual bulk or weight.

The record on appeal prepared in accordance with this subdivision shall be filed in the Superior Court not later than 42 days after the filing of the notice of appeal or 14 days after the filing of any transcript of the proceedings requested in accordance with Rule 76H, whichever occurs later. It shall be the appellant's responsibility to ensure that these time limits are met and to provide the clerk such assistance as is necessary in preparing and copying the record for filing in the Superior Court. If the appellant fails to comply with the requirements of this rule, the District Court may, on motion of any party or on its own initiative, dismiss the appeal for want of prosecution. Upon showing of good cause, the District Court may increase or decrease the time allowed for filing the record.

Upon receipt of the record from the District Court, the clerk of the Superior Court shall send each counsel of record or unrepresented party a written notice of the docketing of the receipt of the record on appeal, the Superior Court docket number, the date upon which the record was received, the date upon which the appellant's brief is due, and a copy of the briefing schedule required by Rule 76G(a).

. . . .

(c) Appeals When No Electronic Recording Was Made. In any case in which electronic recording would be routine or has been timely requested under Rule 76H(a) of these rules, if for reasons beyond the control of any party, no recording, or no transcript thereof, was made, or is available, the appellant

may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection, for use instead of a transcript. This statement shall be served on the appellee within 7 days after an appeal is taken to the Superior Court, and the appellee may serve objections or propose amendments thereto within 7 days after service upon the appellee. Thereupon the statement, with the objections or proposed amendment, shall be submitted to the court for settlement and approval and as settled and approved shall be included in the record on appeal filed with the Superior Court.

Advisory Note – _____ 2019

Rule 76F is amended to change deadlines to use 7-day increments and to make stylistic changes not affecting the substance of the rule. Subdivision (a) is also amended to clarify that it applies when a District Court matter has been appealed to the Superior Court as authorized by statute.

43. Rule 76G of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 76G. BRIEFS AND ORAL ARGUMENTS IN THE SUPERIOR COURT

(a) Time for Filing Briefs. The appellant shall file the appellant's brief within 42 days after the date on which the record is filed in the Superior Court, the appellee shall file the appellee's brief within 28 days after service of the brief of the appellant, and the appellant may file a reply brief within 14 days after service of the brief of the appellee. In no event shall any brief be filed less than 7 days before the date set for oral argument. Upon a showing of good cause, the Superior Court may increase or decrease the time limit specified in this subdivision.

. . . .

(c) Scheduling of Oral Argument. Unless the Superior Court otherwise directs, all appeals shall be in order for hearing 21 days after the date on which appellee's brief is due or is filed, whichever is earlier. The parties may, by agreement, waive hearing and submit the matter for decision on the record and the briefs. The clerk of the Superior Court shall schedule oral argument for the first appropriate date after the appeal is in order for hearing, and shall notify each counsel of record or unrepresented party of the time and place at which oral argument will be heard.

Advisory Note – _____ 2019

Rule 76G is amended to change deadlines to use 7-day increments.

44. Rule 76H of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 76H. ELECTRONIC SOUND RECORDING

. . . .

(e) Transcription of a Court Recording.

. . . .

(3) *Transcript on Appeal.*

. . . .

(B) *Appeal to the Superior Court.*

(i) *Transcript Order.* An appellant must file with the notice of appeal a fully completed transcript order form in order to include in the record on appeal from the District Court to the Superior Court a complete or partial transcript of a proceeding that has been recorded by the court. If the appellant does not order a transcript of the proceeding that has been recorded by the court or does not order the entire transcript, the appellee may, within 7 days after being served with the notice of appeal, order a transcript of all or any portions of the proceeding by filing and serving on all other parties a fully completed transcript order form. The ordering party must pay for the transcript as provided by M.R. App. 5(b).

Advisory Note – _____ 2019

Rule 76H(e)(3)(B)(i) is amended to change a deadline to use a 7-day increment.

45. Rule 80A of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 80A. REAL ACTIONS

(a) Applicability. Writs of entry are abolished, and these Rules of Civil Procedure shall govern the procedure in real actions including actions in the District Court to quiet title to real estate under 14 M.R.S. §§ 6651-6658 and 36 M.R.S. § 946, except as otherwise provided in this rule.

. . . .

Advisory Note – _____ 2019

Subdivision (a) of Rule 80A is amended to update the statutory citations to reference the M.R.S. instead of the M.R.S.A.

46. Rule 80D of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 80D. FORCIBLE ENTRY AND DETAINER

. . . .

(c) Complaint. The complaint for forcible entry and detainer shall be filed no later than one day before the date of the hearing. When the complaint pertains to a residential tenancy, the following materials must be included with the complaint served and filed pursuant to this rule:

(1) A copy of any written lease between the parties; and

(2) A copy of any notice of termination of tenancy served upon the defendant.

Any failure to provide the required attachments may be grounds for a continuance but not for dismissal.

. . . .

(f) Appeal.

(1) *Appeal on Questions of Law.* Either party may appeal to the Superior Court and the Law Court on questions of law as in other civil actions. Rule 76F applies for purposes of the record on appeal to the Superior Court.

(2) *Appeal by Jury Trial De Novo.*

(A) Notice of Appeal and Demand for Jury Trial. Either party may appeal to the Superior Court by jury trial de novo on any issue so triable of right by filing a notice of appeal as provided in Rule 76D. A party that seeks a jury trial de novo shall include in the notice of appeal a written demand for jury trial and shall file with the notice an affidavit or affidavits meeting the requirements of Rule 56(e)(2)(B)(i) and setting forth specific facts showing that there is a genuine issue of material fact as to which there is a right to trial by jury. Failure to make demand for jury trial with accompanying affidavit or affidavits constitutes a waiver of the

right to jury trial, and the appeal shall be on questions of law only, as provided in paragraph (1) of this subdivision.

(B) Preparation and Transmission of the Record. The record on appeal shall be prepared in accordance with Rule 76F. The clerk of the division shall transmit the record to the Superior Court within 7 days of the filing of the notice of appeal, without waiting for a transcript. The clerk of the Superior Court shall docket the appeal on receipt of the record thus transmitted. If a transcript is subsequently received by the clerk of the District Court, it shall be transmitted to the Superior Court immediately and shall be incorporated in the record on appeal by the clerk of the Superior Court.

(3) *Same: Determination on Affidavits.* The appellee may, within 7 days after the mailing of the clerk's notice of the docketing of the appeal in the Superior Court, file a counter affidavit or affidavits meeting the requirements of Rule 56(e)(2)(B)(i), together with a brief statement of the grounds of any cross appeal for which notice was timely filed. The court may upon its own motion, or the motion of either party, order that the transcript or relevant portions thereof be incorporated in the record on appeal before the court's review of the affidavits and record under this paragraph. The court shall review the affidavits of both parties and the record on appeal, including any transcript or portions thereof ordered to be incorporated as provided in this paragraph, and shall determine whether the appellant's affidavits are adequate and, if so, whether there is a genuine issue of material fact as to which there is a right to trial by jury.

(4) *Same: Genuine Issue of Fact: Further Pretrial Proceedings; Assignment for Trial.* If the court finds that the appellant has shown in light of the affidavits and the whole record, including any transcript or portions thereof ordered to be incorporated as provided in paragraph (3) of this subdivision, that there is a genuine issue of material fact as to which there is a right to trial by jury, it shall either direct the clerk immediately to place the action upon a jury trial list maintained in accordance with Rule 40 or shall order the parties to file pretrial memoranda containing specified information or to appear for a conference or to file memoranda and appear for a conference. After review of the pretrial memoranda or at the conclusion of the conference, the court shall direct the clerk to place the action upon a jury trial list. Scheduling of actions for trial shall be at the direction of the court, as provided in Rule 40.

If either party intends to offer witnesses or exhibits not offered at the trial in the District Court, that party shall file a list of the names and addresses of such witnesses and a brief description of such exhibits within 7 days after notification that the action has been placed upon a jury trial list or, if pretrial memoranda or a pretrial conference have been ordered, at the time set by the court for such memoranda or conference. The opposing party may file a similar list and description in reply within 7 days, or as ordered by the court. No witness or exhibit may be offered in the Superior Court unless it was offered in the District Court or appears on a list filed in accordance with this paragraph.

(5) *Same: No Genuine Issue of Fact: Disposition.* If the court finds that the appellant has not shown in light of all the affidavits and the whole record that there is a genuine issue of material fact as to which there is a right to trial by jury, it shall enter judgment dismissing the appeal; provided that, if either party has raised an independent question of law in the notice of appeal, the court shall review the record pertaining to it. If the court finds that a properly raised question of law is material to a legal claim or defense, the appeal shall proceed as provided for appeals on questions of law in paragraph (1) of this subdivision.

(6) *Same: Jury Trial.* An action placed upon a jury trial list shall be tried by jury. If the appellant withdraws the demand for jury trial in a writing filed with the clerk before the date on which the jury is to be empaneled, or if the court upon its own initiative at any time finds that no right to trial by jury of any issue exists under the Constitution or statutes of the State of Maine, the appeal shall be dismissed or proceed on a material question of law, as provided in paragraph (5) of this subdivision.

(7) *Same: Rules Inapplicable.* Rules 16 and 16A, 26A-37, 39, 42 and 56 do not apply to jury trials de novo in the Superior Court under this rule.

(g) No Joinder of Other Actions. Forcible entry and detainer actions shall not be joined with any other action, nor shall a defendant in such action file any counterclaim.

(h) Venue. An action for forcible entry and detainer shall be brought in the division in which the property is located.

(i) Removal. There shall be no removal of forcible entry and detainer actions, except as provided by statute.

(j) Issue of Writ of Possession; Stay. A writ of possession shall issue within the time provided by statute after entry of judgment therefore, provided that

(1) If defendant within the time provided by statute makes a timely motion pursuant to any of the rules enumerated in Rule 76D as terminating the running of the time for appeal, the issuance of the writ shall be stayed until 7 days after entry of an order disposing of the motion;

(2) On motion of defendant filed in the Superior Court within the time provided by statute, or any extension thereof under paragraph (1) of this subdivision, the Superior Court may grant a stay for the full time for appeal, or any extension thereof, allowed under Rule 76D, if the Superior Court finds that defendant's grounds of appeal present a genuine issue of material fact or law;

(3) If defendant files a timely notice of appeal, issuance of the writ shall be stayed until a stay pending appeal is granted or denied in the Superior Court as provided in paragraph (4) of this subdivision;

(4) When the appeal is docketed in the Superior Court, that court may stay the issuance of the writ pending disposition of the appeal on conditions as provided in 14 M.R.S. § 6008.

A copy of the writ of possession shall after issue be retained by the clerk for examination by any interested person.

(k) Stays Upon Appeal to the Law Court. If an aggrieved party appeals from a judgment of the Superior Court in accordance with Rule 76D, an order of the Superior Court staying the writ of possession, together with any conditions imposed pursuant to 14 M.R.S. § 6008, shall remain in effect until final disposition of the appeal in the Law Court. Either party may move in the Superior Court during the pendency of the appeal for modification or amendment of the order as provided in 14 M.R.S. § 6008. Nothing in this rule limits the power of the Law Court during the pendency of the appeal to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

Advisory Note – _____ 2019

Subdivision (a) of Rule 80D is amended to require, with respect to a complaint regarding a residential tenancy, that a copy of any written lease between the parties and a copy of the notice of termination of tenancy served upon the defendant be attached to the complaint. Any failure to provide the required attachments may be grounds for a continuance but not for dismissal.

Rule 80D is amended to update cross-references to other amended rules, to update the statutory citations to reference the M.R.S. instead of the M.R.S.A., to change deadlines to use 7-day increments, and to make stylistic changes not affecting the substance of the rule.

47. Rule 80E of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 80E. ADMINISTRATIVE INSPECTION WARRANTS

. . . .

(e) Execution. The person to whom a warrant is issued shall execute the same by conducting the inspection authorized during normal business hours within 14 days after issuance of the warrant. The person executing the warrant shall at the time of execution deliver a copy thereof to the owner or the occupant of the premises inspected or leave a copy on said premises in a conspicuous place.

(f) Return. Not later than 14 days after execution of the warrant the person executing it shall file a return with the court from which the warrant issued setting forth the date and time of the inspection and any violations of law found upon the inspected premises.

Advisory Note – _____ 2019

Subdivisions (e) and (f) of Rule 80E are amended to change deadlines to use 7-day increments.

48. Rule 80F of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 80F. TRAFFIC INFRACTIONS

. . . .

(b) Commencement of Proceeding. A proceeding under this rule is commenced by delivery of a copy of a Violation Summons and Complaint completed in the manner prescribed by subdivision (c). Such Violation Summons and Complaint may be:

(1) filled out and delivered to defendant personally by any officer authorized to enforce the motor vehicle laws of this state who has probable cause to believe that a traffic infraction has been committed;

(2) filled out by any officer authorized to enforce the motor vehicle laws of this state who has probable cause to believe that a traffic infraction has been committed and (A) transmitted to any officer authorized to enforce a statute of this state defining a traffic infraction for delivery to the defendant personally, or (B) served on the defendant in any manner permitted under Rule 4(f)(4) of the Maine Rules of Criminal Procedure; or

(3) filled out by a prosecutor and delivered to the defendant personally or the defendant's attorney personally if the traffic infraction arises out of the same set of facts which gave rise to another traffic infraction or criminal complaint under the motor vehicle laws of this state. Any Violation Summons and Complaint served as provided in this paragraph may be filed in the Violations Bureau by delivering it to the clerk of the division in which the infraction is alleged to have been committed or in a county in which the criminal complaint is or was pending. The clerk may receive the defendant's answer and shall send the Violation Summons and Complaint and any answer to the Violations Bureau.

The officer delivering the Violation Summons and Complaint shall not take the defendant into custody. Within 7 days after delivery to defendant, the officer shall cause the original of the Violation Summons and Complaint to be filed with the Violations Bureau. No filing fee is required. Any Violations Summons and Complaint filed later than 14 days after delivery to the defendant

will be dismissed without prejudice. All proceedings arising under a statute shall be brought in the name of the State of Maine. All proceedings arising under an ordinance shall be brought in the name and to the use of the political subdivision that enacted such ordinance.

(c) Content of Violation Summons and Complaint. The Violation Summons and Complaint shall contain the name of the defendant; the time and place of the alleged infraction; a brief description of the infraction; the number of days within which the defendant must file an answer in writing with the Violations Bureau or the specific date by which the written answer must be filed; and an original or electronic signature of the officer issuing the ticket and complaint. No other summons, complaint or pleading shall be required of the state, but motions for appropriate amendment of the complaint shall be freely granted.

(d) Pleadings of Defendant.

(1) *Answer.* An answer shall be filed with the Violations Bureau within 21 days after the date of service of the Violation Summons and Complaint. The answer shall state that the violation is either contested or not contested and the answer shall be made in writing by the defendant or by defendant's attorney.

. . . .

(e) Incomplete Filing. Notwithstanding Maine Rule of Civil Procedure 5(f), the Clerk of the Violations Bureau or the Clerk's designee, may docket an incomplete filing in a traffic infraction matter for the sole purpose of being able to respond to customer service inquiries. The Clerk of the Violations Bureau or the Clerk's designee may dismiss an infraction if the original Violation Summons and Complaint charging that infraction is not received by the Violations Bureau within 28 days after receipt of the defendant's answer.

(f) Filed Cases. When the attorney for the State files a traffic infraction complaint, with or without conditions, such filing shall be for a period of 175 days. Filed cases shall be dismissed by the Clerk of the Violations Bureau or the Clerk's designee at the conclusion of the 175-day period unless the attorney for the State notifies the Bureau within that time period that the case should be set for trial.

When the attorney for the State files a traffic infraction complaint, with the condition of payment of costs, the costs must be paid to the Violations Bureau within 28 days after the date of the filing. If the costs are not paid within 28 days, the Violations Bureau shall set the case for trial.

(g) Venue; Trial. A traffic infraction proceeding shall be filed in the Violations Bureau and, upon the filing of an answer of "contested," the Violations Bureau shall transfer the case to the appropriate division of the District Court for trial. Unless otherwise ordered by the court, the trial of a traffic infraction shall be held in the division in which the infraction is alleged to have been committed. If the defendant is adjudicated to have committed the traffic infraction and a fine is imposed by the court, the court shall inform the defendant that the fine must be paid within 28 days after the date on which the judge imposed the fine unless the court orders a different payment date. If the fine is not paid in full within 28 days or within the period of time ordered by the court, whichever is longer, the defendant's right to operate a motor vehicle in Maine is suspended immediately without further notice and the Secretary of State shall be notified of the suspension. Immediately upon disposition, the case shall be returned to the Violations Bureau.

. . . .

(k) Default.

(1) *Entry of Default.* If the defendant fails to respond within 35 days after the date of service of the Violation Summons and Complaint on the defendant, or if the defendant fails to appear at trial, the Clerk of the Violations Bureau or the Clerk's designee shall enter a default judgment and adjudicate that the defendant has committed the traffic infraction alleged. In each case, after entry of default, the Clerk or the Clerk's designee shall impose the fine from the schedule of fines established by the Chief Judge.

(2) *Setting Aside the Default.* For good cause shown the court may set aside the default and adjudication under M.R. Civ. P. 55(c) and 60(b), as applicable. If it is determined that due to the operation of the Servicemembers Civil Relief Act of 2003, as amended, a default should not have been entered, all costs shall be stricken, the adjudication vacated, the default stricken, and the defendant permitted an opportunity to answer.

(l) Extension of Time to Pay Fines.

(1) *Failure to Answer or Answer of "No Contest."* If a defendant in a traffic infraction proceeding fails to answer within 21 days after the date of service of the Violation Summons and Complaint or answers "no contest" but does not pay the fine or pays only part of the fine, the Violations Bureau shall send a notice to the defendant, at his/her last known address, that if the fine is not paid in full within 28 days, the defendant's right to operate a motor vehicle in Maine will be suspended without further notice. If the fine is not paid in full within the 28-day period, the suspension is effective and the Secretary of State shall be notified of the suspension.

(2) *Contested Infractions*. If the traffic infraction case is referred to court because the defendant contested the case and if the defendant changes the answer to "no contest" or if a fine is imposed by the court, the fine must be paid within 28 days after imposition unless the court orders a different payment date. If the fine is not paid in full within 28 days or within the period of time ordered by the court, whichever is longer, the defendant's right to operate a motor vehicle in Maine is suspended immediately without further notice and the Secretary of State shall be notified of the suspension.

Other than the above, there shall be no extensions of time for payment of a traffic infraction fine.

. . . .

Advisory Note – _____ 2019

Rule 80F is amended to update cross-references to other rules, to change deadlines to use 7-day increments and to make stylistic changes not affecting the substance of the rule.

49. Rule 80G of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 80G. ACTIONS FOR LICENSE REVOCATION OR SUSPENSION

(a) Actions for License Revocation or Suspension. Actions in the District Court under 4 M.R.S. § 152(9) seeking revocation or suspension of a license issued by a state licensing agency pursuant to 4 M.R.S. § 184 shall be governed by this rule.

(b) Complaint and Service of Process. The action shall be commenced by complaint filed in the District Court. The complaint must allege the violation of a cited statute or rule and the relief requested. The complaint and summons shall be served as required by 4 M.R.S. § 184.

(c) Emergency Revocation or Suspension of License. Upon the filing of a verified complaint or complaint accompanied by affidavits demonstrating an immediate threat to the public health, safety or welfare, the court ex parte may order the temporary revocation or suspension of a license pursuant to 4 M.R.S. § 184(6). The court shall promptly order expedited notice and hearing on the complaint. A temporary order of revocation or suspension shall expire within 30 days of issuance unless renewed after notice and hearing.

(d) Trial. Trial of the action shall be as provided in these rules.

(e) Judgment. The parties may not dispose of the action by agreement or consent decree without the approval of the court. The court shall make findings of fact and conclusions of law as required by 4 M.R.S. § 184(7). Upon entry of judgment, the clerk shall serve each party with a copy of the judgment, including any separate opinion, findings of fact and conclusions of law supporting the judgment, and with a statement describing appellate rights to seek review of the judgment.

Advisory Note – _____ 2019

Rule 80G is amended to update the statutory citations to reference the M.R.S. instead of the M.R.S.A. and to make stylistic changes not affecting the substance of the rule.

50. Rule 80H of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 80H. CIVIL VIOLATIONS

(a) Applicability. These rules shall apply to civil violation proceedings in the District Court, other than traffic infraction proceedings; provided, however, that this rule, so far as applicable, shall supersede the general provisions of the rules in all such proceedings where the amount of the fine, penalty, forfeiture or other sanction that may be assessed for each separate violation is $1,000 or less. "Civil violation" has the meaning set forth in 17-A M.R.S. § 4-B.

(b) Commencement of Proceedings. A proceeding under this rule shall be commenced by one of the following methods:

. . . .

(2) A citation may be filled out in the manner prescribed in paragraph (1) of subdivision (c) of this rule by any officer authorized to enforce a statute or ordinance to which this rule applies, if the officer has probable cause to believe that a civil violation under such statute or ordinance has been committed. The officer may cause the citation to be served, by any method provided in Rule 4(d), (e), (f), (g) or (j) of these rules.

The officer serving the citation shall not take the defendant into custody, except as temporary detention is authorized by 17-A M.R.S. § 17. As soon as practicable after service upon the defendant, the officer shall cause the original of the citation to be filed with the court. No filing fee is required. All proceedings arising under a statute shall be brought in the name of the State of Maine. All proceedings arising under an ordinance shall be brought in the name and to the use of the political subdivision which enacted such ordinance.

. . . .

(h) Default.

(1) Entry of Default. If the defendant fails to appear as required by this Rule, the judge shall enter the defendant's default, adjudicate that the defendant has committed the civil violation alleged, and impose a fine as set by the judge

for that particular case or as set in accordance with a schedule of fines for civil violations established by the Chief Judge of the District Court.

(2) Setting Aside the Default. For good cause shown, the court may set aside the default and adjudication under M.R. Civ. P. 55(c) and 60(b), as applicable. If it is determined that, due to the operation of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, a default should not have been entered, the court shall vacate the adjudication, strike the default and all costs assessed, vacate any license suspension, and permit the defendant an opportunity to answer.

Advisory Note – _____ 2019

Rule 80H is amended to update the statutory citations to reference the M.R.S. instead of the M.R.S.A. and to update a cross-reference to comport with the contemporaneous amendment of Rule 55.

51. Rule 80J of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 80J. WARRANTS FOR SURVEYS AND TESTS

(a) Who May Apply. An official or employee of any State agency or any political subdivision of the State which agency or subdivision is authorized by law to acquire land through the exercise of eminent domain for the purpose of providing solid waste disposal facilities may apply to a District Court Judge in the division and district in which the land to be surveyed or tested is located for a warrant under 4 M.R.S. § 180 to survey and conduct tests upon particularly described premises which are under consideration for condemnation.

. . . .

(e) Execution. The warrant shall be executed in compliance with the provisions of Title 4 M.R.S. § 180.

(f) Return. Not later than 63 days after execution of the warrant the person executing it shall file a return with the Court from which the warrant issued setting forth the date and time of the inspection and the results of the inspection.

Advisory Note – _____ 2019

Rule 80J is amended to update the statutory citations to reference the M.R.S. instead of the M.R.S.A. and to change a deadline to use a 7-day increment.

52. Rule 80K of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 80K. LAND USE VIOLATIONS

(a) Applicability. Except as otherwise provided in this rule, these rules shall apply to proceedings in the District Court involving alleged violations of land use laws and ordinances, whether administered and enforced primarily at the state or the local level, including but not limited to, those statutes, ordinances, codes, rules and regulations set forth in 4 M.R.S. § 152(6-A).

. . . .

(h) Authority of Complainant. A person who is not an attorney may represent a municipality under 30-A M.R.S. § 4221(2), or 30-A M.R.S. § 4452(1), or the State under 38 M.R.S. §§ 342(7), 441(2), if the person files with the court when first appearing a written authorization from the municipal officers or the Commissioner of the Department of Environmental Protection, as appropriate, and a current certificate of familiarity with court procedures awarded under a program established by the Commissioner of Human Services as provided in 30-A M.R.S. § 4221(2).

Advisory Note – _____ 2019

Rule 80K is amended to update the statutory citations to reference the M.R.S. instead of the M.R.S.A.

53. Rule 80L of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 80L. JURY TRIAL DE NOVO IN SMALL CLAIMS APPEALS TO THE SUPERIOR COURT

. . . .

(c) Pretrial and Trial Proceedings.

(1) *Determination on Affidavits.* When the record in a small claims appeal in which jury trial de novo has been demanded is received in the Superior Court, the clerk shall immediately notify the parties. The plaintiff may, within 14 days after the mailing of such notification, file a counter affidavit or affidavits meeting the requirements of Rule 56(e)(2)(B)(i), together with a brief statement of the grounds of any cross appeal for which a notice was filed under Rule 11(a) of the Maine Rules of Small Claims Procedure. The court shall thereupon review the affidavits of both parties, together with the entire record on appeal, and shall determine whether the defendant's affidavits are adequate and, if so, whether there is a genuine issue of material fact as to which there is a right to trial by jury.

(2) *Genuine Issue of Fact: Further Pretrial Proceedings; Assignment for Trial.* If the court finds that defendant has shown in light of the affidavits and the whole record that there is a genuine issue of material fact as to which there is a right to trial by jury, it shall either direct the clerk immediately to place the action upon a jury trial list maintained in accordance with Rule 40(a) or shall order the parties to file pretrial memoranda containing specified information or to appear for a pretrial conference or to file memoranda and appear for a conference. After review of the pretrial memoranda or at the conclusion of the conference, the court shall direct the clerk to place the action upon a jury trial list. Scheduling of actions for trial shall be at the direction of the court, as provided in Rule 40.

If either party intends to offer witnesses or exhibits not offered at the trial in the District Court, that party shall file a list of the names and addresses of such witnesses and a brief description of such exhibits within 14 days after notification that the action has been placed upon a jury trial list or, if pretrial memoranda or a pretrial conference have been ordered, at the

time set by the court for such memoranda or conference. The opposing party may file a similar list and description in reply within 14 days, or as ordered by the court. No witness or exhibit may be offered in the Superior Court unless it was offered in the District Court or appears on a list filed in accordance with this paragraph.

. . . .

Advisory Note – _____ 2019

Rule 80L is amended to change deadlines to use 7-day increments and to update cross-references to other amended rules.

54. Rule 93 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 93. FORECLOSURE DIVERSION PROGRAM

This rule shall govern operation of the Foreclosure Diversion Program.

(a) Definitions. As used in this rule, the following terms shall have the following meanings:

(1) "Commercial loan" means a loan made to a borrower in which the proceeds of the loan are not used, in whole or in part, for personal, family or household purposes, and/or are not used to refinance a loan made in whole or in part for personal, family or household purposes.

(2) "Foreclosure action" means any civil action initiated pursuant to title 14, chapter 713 of the Maine Revised Statutes (14 M.R.S. §§ 6101-6325) to foreclose on a property subject to a mortgage or other note or bond secured by that property, other than a State mortgage pursuant to 14 M.R.S. §§ 6151-6153.

(3) "Owner-occupant" means an individual who is the mortgagor of a residential property that is that individual's primary residence. The term may include two or more individuals who are joint mortgagors of that residential property.

(4) "Primary residence" means a residential property that is an individual's principal place of abode.

(5) "Residential property" means a single residential real property including: (A) not more than four residential units owned by the mortgagor, or (B) a single condominium unit owned by the mortgagor within a larger residential condominium property.

(b) Foreclosure Diversion Program Application and Administration.

(1) *Actions Covered*. This rule shall govern all foreclosure actions filed after December 31, 2009, against a defendant who is an owner-occupant. This rule shall also govern all foreclosure actions that are filed on or before

December 31, 2009, against defendants who are owner-occupants, and who are ordered by the court to mediation pursuant to subsection (q) of this rule.

(2) *Manager*. The Manager of the Foreclosure Diversion Program, under the direction of the State Court Administrator or designee, shall manage the Foreclosure Diversion Program and shall supervise the:

(A) Operation and support of the Foreclosure Diversion Program state-wide;

(B) Identification and qualification of persons to be mediators in the Program;

(C) Orientation and certification of individuals to be mediators pursuant to this rule;

(D) Trial court clerks' scheduling of mediations required or requested pursuant to this rule;

(E) Payment of mediators for services pursuant to this rule;

(F) Preparation and filing of reports about mediations conducted pursuant to this rule and of such other reports and recommendations regarding the Foreclosure Diversion Program as may be required by the Supreme Judicial Court, or the State Court Administrator or designee; and

(G) Development and implementation of policies, procedures, and forms to manage, evaluate, and report about the Foreclosure Diversion Program.

(3) *Mediators*.

(A) Active Retired Justices or Judges may be assigned by the Chief Justice or Chief Judge of their courts to act as Foreclosure Diversion Program mediators after meeting program requirements; and

(B) Other persons eligible to be certified as mediators pursuant to this rule shall:

(i) Be educated and experienced in the professions of law, real estate, accounting, banking, or mediation; have work experience that includes foreclosures, credit and collections work; or have done work on behalf of creditors or debtors in actions to collect on mortgages, notes, or debts;

(ii) Have successfully completed orientation provided by the Foreclosure Diversion Program and continuing education necessary to remain on the active roster;

(iii) Have received a certificate of qualification to serve as mediators from the Foreclosure Diversion Program subject to such terms and conditions as deemed appropriate; and

(iv) Have a laptop computer that is compatible with court printers for use at all mediation sessions. In the alternative, mediators may use laptops or other portable computers and portable printers.

(c) Foreclosure Diversion Program Participation Requirements.

(1) *Answers: Request for Mediation*. Within 21 days after being served with a summons and complaint each defendant shall (i) serve an answer to the complaint on the plaintiff, and (ii) file a copy of that answer with the court. To answer foreclosure complaints and request mediation, defendants may use the one-page form approved and developed by the Department of Professional and Financial Regulations, Bureau of Consumer Credit Protection, or may file an answer that complies with M.R. Civ. P. 12(a) and also requests mediation. However, if a defendant appears or otherwise requests mediation in the action within 21 days after service of the summons and complaint, but does not file an answer to the complaint, mediation shall be scheduled in accordance with this rule, and the deadline for filing an answer shall be extended until 21 days after a final mediator's report is filed with the court or until 21 days after the court waives mediation or orders that mediation shall not occur. A court may schedule mediation in an action in which the defendant has failed to timely appear, answer, or otherwise request mediation, and/or has failed to attend an informational session, but has not been defaulted pursuant to M.R. Civ. P. 55.

(2) *Informational Sessions.* The Foreclosure Diversion Program is authorized to design and implement informational sessions regarding foreclosure proceedings and the diversion process, and the court may, in its discretion, schedule informational sessions.

(3) *Mediation*. The court will schedule a mediation session for each foreclosure action filed against a defendant who is an owner-occupant and who appears, answers, or otherwise requests mediation in the action within 21 days after service of the summons and complaint and attends an informational session.

(4) *Financial Forms to be Provided.* In addition to the pleading requirements specified by statute and court rules, a plaintiff shall file and serve with the foreclosure complaint a set of financial forms requesting information from the defendant that would allow the plaintiff to consider or develop alternatives to foreclosure or otherwise facilitate mediation of the action. These forms may be forms designed by individual lenders or standardized forms developed by the federal government, a state agency, or some other group, provided that the forms sent by the plaintiff are the forms that it will use in considering or developing alternatives to foreclosure. With each set of financial forms served on a defendant, the plaintiff must include an envelope large enough to contain the forms. The envelope shall be addressed to the plaintiff's attorney, to whom this information will be sent. If the mailing address is a P.O. Box, plaintiff's attorney's physical address will also be provided.

(5) *Completion and Return of Forms.* Forms and any additional information required by a plaintiff to review a defendant's loan for a possible workout, shall be identified by the plaintiff at mediation and provided to the plaintiff's attorney *and* to the court by the defendant no later than 21 days after the first mediation session. If a defendant fails to meet this requirement, the plaintiff's attorney may file a written motion with the court, with a copy to the defendant, requesting that the case be returned to the regular docket because the defendant has failed to provide the requested information. If the defendant has failed to appear at an informational session and/or mediation session, the court may return the case to the regular court docket without the filing of a motion by the plaintiff.

(d) Deferral of Dispositive Motions and Requests for Admissions.

(1) *Generally.* When a defendant, who is an owner-occupant, appears, answers, or otherwise requests mediation within 21 days after service of the summons and complaint in a foreclosure action filed after December 31, 2009, or when mediation in the Foreclosure Diversion Program is ordered by the court, no dispositive motions or requests for admissions shall be filed until five (5) days after mediation is completed and a final mediator's report is filed with the court, or until the court orders that mediation shall not occur.

(2) *Exception for Commercial Loans*. In any actions where the mortgage acts as collateral given solely to secure a commercial loan, counsel for the plaintiff, or the plaintiff, if unrepresented by counsel, may file and serve with the complaint a motion requesting exemption from the deferral provided for in section (1). The motion shall be subject to Rule 11(a), and shall include both the assertion that the loan is a commercial loan, as well as the factual basis for that assertion. The motion shall be accompanied by a proposed order setting forth the specific relief requested. In any proceeding to determine whether section (1) should apply, the plaintiff must establish, by a preponderance of the evidence, that the mortgage was given solely to secure a commercial loan. If the court determines that the plaintiff has met this burden, section (1) shall not apply unless the court concludes that its application is in the best interests of justice.

(e) Notice of Informational Session and Mediation.

(1) When a case enters the Foreclosure Diversion Program, the clerk shall send a scheduling notice listing the date, time, and location of the informational session and first mediation session to the plaintiff, the defendant and any other party required to attend, and shall provide a copy of that notice to all parties-in-interest.

(2) Unless the parties agree otherwise or unless the court extends the deadline pursuant to subsection (i), mediation shall be completed not later than 91 days after the clerk sends the mediation scheduling notice to the parties.

(f) Contents of the Foreclosure Mediation Scheduling Notice.

The mediation scheduling notice shall contain scheduling information, and attached thereto any court forms that the parties are required to file with the court, exchange with each other in advance, or bring to the mediation session(s). The Plaintiff's Foreclosure Mediation Information form (FDP-02A) must be filed with the court no later than three days before the date indicated in the first Notice of Informational Session and Mediation.

(g) Mediation Issues.

The mediation shall address all issues of foreclosure, including but not limited to: (1) proof of ownership of the note and any assignments of the note; (2) calculation of the sums due on the note for principal, interest, and any costs or fees, reinstatement of the mortgage, and modification of the loan; (3) restructuring of the mortgage debt; and (4) nonretention alternatives to foreclosure. Foreclosure mediations shall utilize the calculations, assumptions and forms established by the Federal Deposit Insurance Corporation and published in the Federal Deposit Insurance Corporation Loan Modification Program Guide, as set out on the Federal Deposit Insurance Corporation's publicly accessible website. In the alternative, foreclosure mediations may utilize a reasonably equivalent system of calculating the value of the loan modification in each case.

(h) Participation in Mediation.

(1) A mediator shall include in the mediation process any person the mediator determines is necessary for effective mediation, such as a potential contributor to the household, a property lien holder, other creditor or party-in-interest whose participation is essential to resolution of issues in the foreclosure. Mediation and appearance in person is mandatory for:

(A) the defendant;

(B) counsel for the defendant, if represented;

(C) counsel for the plaintiff; and

(D) the plaintiff, or representative of the plaintiff, who has the authority to agree to a proposed settlement, loan modification, or dismissal of the action. When the plaintiff is represented by counsel who has authority to agree to a proposed settlement and is present, the plaintiff or its representative may participate by telephone or video.

(2) For persons who are not the plaintiff or the defendant in the pending civil action, or their attorneys, participation is voluntary and the mediation shall proceed in the absence of such a person if that person declines to participate in the mediation.

(3) When a plaintiff participates by telephone, plaintiff's counsel shall ensure the quality of the connection is sufficient to allow clear communication for the duration of the session. Plaintiff's counsel may be required to furnish a speakerphone for use in the mediation room, or elsewhere. When telephone equipment is available, the plaintiff's counsel shall make arrangements at plaintiff's expense for reaching the plaintiff at a toll free number or through the use of automated conference call services. Plaintiff will comply with all requests contained in the mediation scheduling order, including requests for information about telephone participation or video participation. Requests for video participation must be made at least 7 days before the scheduled mediation session.

(i) Multiple Sessions.

Mediators are authorized to schedule additional or follow-up sessions, if necessary. Such sessions will be conducted in the same manner as the original session, and will not extend the time limit to complete mediation set in subsection (e)(2) unless the parties agree to such an extension or unless the court finds that such an extension is necessitated by a plaintiff's delay.

(j) Good Faith Effort.

If a plaintiff or defendant or attorney fails to attend or to make a good faith effort to mediate, the mediator shall inform the court, and the court may impose appropriate sanctions. Sanctions may include, but are not limited to, tolling of interest and other charges pending completion of mediation, assessment of costs and fees, assessment of reasonable attorney fees, entry of judgment, permitting dispositive motions and/or requests for admissions to be

filed, entry of an order that mediation shall not occur, dismissal without prejudice, dismissal without prejudice with a prohibition on refiling the foreclosure action for a stated period of time, and/or dismissal with prejudice.

(k) Continuing or Canceling Mediation.

(1) If either party needs to have a mediation session continued, that party shall file a motion requesting such change with the court and serve a copy upon all opposing parties. If the motion is granted, the party requesting a continuance shall inform, in writing, all other parties and the mediator of any change approved.

(2) If the parties agree to a settlement, and have filed a dismissal of the action at least 48 hours before the scheduled mediation, mediation will be cancelled by the clerk.

(3) If the plaintiff or the defendant or the mediator appears at the original mediation date and time because the party requesting the continuance failed to timely advise all other parties or the mediator, the offending party or counsel may be sanctioned.

(l) Location of Mediation Sessions.

Mediation sessions will be held at court locations, whenever possible. The Foreclosure Diversion Program Manager may approve use of an alternate site if the parties and mediator agree upon a location, or if courthouse resources cannot accommodate mediation sessions. The original case file shall not leave Judicial Branch buildings.

(m) Waiver of Mediation.

A defendant may request that mediation be waived by filing a completed "motion to waive" form with the court. If the defendant files that motion, the court may waive mediation only upon a finding by the court that:

(A) there is good cause to waive mediation, and

(B) the defendant is making a free choice to waive mediation after being informed of the options and services that may be available through mediation.

(n) Mediator's Reports.

(1) Not later than 7 days following the mediation session, each mediator shall complete and file with the court a report for each mediation session, including follow-up sessions, conducted pursuant to this rule.

(2) The mediator shall also provide a copy of each mediator's report to the parties at the time of submission, and shall provide details of the mediator's report to the Foreclosure Diversion Program for purposes of data tracking and payment for mediation services.

(3) In the final mediator's report, the mediator shall indicate that the parties fully completed either the Net Present Value Worksheet found in the Federal Deposit Insurance Corporation Loan Modification Program Guide or another reasonable determination of net present value, or explain the reasons why the parties did not complete this analysis.

(4) If the final mediator's report indicates a failure to reach agreement or any result other than a settlement or dismissal of the case, the final report shall include the outcomes of the Net Present Value Worksheet in the Federal Deposit Insurance Corporation Loan Modification Program Guide or other reasonable determination of net present value and must note any points of agreement reached during the mediation.

(o) No Waiver of Rights.

No party waives any rights in the foreclosure action by participating in informational sessions or foreclosure mediation.

(p) Information and Confidentiality.

(1) Parties shall submit all information required by the Foreclosure Diversion Program or Foreclosure Diversion Program mediator.

(2) Admissibility of evidence of statements made or discussions occurring during mediation is subject to M.R. Evid. 408.

(3) Disclosures by a mediator of statements or actions occurring during mediation or of information acquired during mediation shall be subject to the same limitations as are stated in M.R. Civ. P. 16B(j) and M.R. Evid. 514. A mediator shall keep confidential and not disclose financial documents, worksheets and information received during the course of the mediation, except as such information may be used to facilitate the mediation session or as disclosure is otherwise authorized by court order.

(4) Except for financial information included as part of the foreclosure complaint or any answer or response filed by the parties, any financial statement or information provided to the court, a mediator, or to the parties during the course of mediation is confidential and is not available for public inspection. Any financial statement or information shall be made available, as necessary, to the court, the attorneys whose appearances are entered in the case, the mediator assigned to the matter, and the parties to the mediation. Any financial statement or information designated as confidential under this subsection, if filed with the court, shall be sealed and kept separate from other court papers in the case and may not be used for any purposes other than mediation.

(q) Optional Availability of Mediation.

(1) In addition to those foreclosure actions for which mediation is mandatory pursuant to this rule and 14 M.R.S. § 6321-A, a defendant who is an owner-occupant in any foreclosure action that was pending but had not yet resulted in final judgment as of January 1, 2010, may request by motion that the court order mediation pursuant to this rule. The court may order mediation pursuant to this rule if:

(A) after consulting with the Foreclosure Diversion Program Manager, the court determines that mediation resources are available to perform the mediation; and

(B) the court finds that mediation will not unduly delay the proceedings or result in prejudice to the plaintiff.

(2) When optional mediation is ordered pursuant to paragraph (1):

(A) the court may order the plaintiff to send the financial forms described in subsection (c)(4) of this rule to the defendant;

(B) the court may order the parties to attend an informational session or seek the assistance of a housing counselor before mediation; and

(C) the filing of dispositive motions and requests for admissions shall be deferred until 7 days after mediation is completed and a final mediator's report is filed with the court.

Advisory Note – _____ 2019

Subdivision (f) is amended to provide that the Plaintiff's Foreclosure Mediation Information form (FDP-02A) must be filed with the court no later than three days before the date indicated in the first Notice of Informational Session and Mediation.

Rule 93 is further amended to change deadlines to use 7-day increments, to update a cross-reference to Rule 16B, and to make stylistic changes not affecting the substance of the rule.

55. Rule 105 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 105. ANSWER; RESPONSE; COUNTERCLAIM

(a) Answer and Appearance. Except as provided for motions to modify support filed pursuant to 19-A M.R.S. § 2009, a party served with a complaint, petition or post-judgment motion shall file an appearance and answer within 21 days after service unless the court directs otherwise. Responses to motions to modify support shall be filed within 28 days after service, unless the court directs otherwise. Any party served with a counterclaim or a cross-claim shall serve an answer within 21 days after service on that party. The time for answer by persons served outside the Continental United States or Canada shall be governed by Rule 12(a). A party who intends to respond to a de facto parentage complaint must file an affidavit addressing the factors of 19-A M.R.S. § 1891(3)(A)-(E), and shall serve it on all parties to the proceeding. When the court schedules a hearing on any matter before the 21-day time for filing an appearance and answer, the appearance and answer shall be filed before the time set for hearing if the hearing notice was served with the complaint, petition or motion.

. . . .

Advisory Note – _____ 2019

Subdivision (a) of Rule 105 is amended to change a deadline to use a 7-day increment.

56. Rule 110B of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 110B. PREHEARING SCHEDULE AND PROCEDURE FOR CASES INVOLVING NO MINOR CHILDREN

. . . .

(c) Prehearing Conference. Upon the court's own motion or at the request of a party, the court may hold prehearing conferences, including a judicial settlement conference, as provided in Rule 16 or Rule 16A and to address prehearing and hearing issues including case management. The court shall exercise its discretion in deciding whether to permit a party to participate in conferences, mediation or hearings by telephone.

Advisory Note – _____ 2019

Rule 110B is amended to update a cross-reference to refer to Rule 16 generally.

57. Rule 132 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 132. CASE MANAGEMENT

. . . .

(c) Existing Scheduling Orders. When scheduling orders have been entered in the originating court pursuant to Rule 16, those orders shall be superseded by any scheduling orders or modifications entered after the case is transferred to the BCD. Any existing scheduling order shall remain in effect unless or until superseded by a BCD scheduling order or stayed or modified upon motion.

Advisory Note – _____ 2019

Subdivision (c) of Rule 132 is amended to comport with amendments to Rules 16 and 16A.

58. Rule 133 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 133. DISCOVERY

. . . .

(b) Discovery Dispute Conference Request. A moving party may request a Rule 7(b)(1) conference through electronic communication that complies with Rule 138 without submitting a paper copy of the request. Electronic transmittal of the request constitutes a representation to the court, subject to Rule 11, that the moving party has complied with the requirements of Rule 7(b)(1).

. . . .

Advisory Note – _____ 2019

Subdivision (b) of Rule 133 is amended to change a cross-reference to Rule 26(g) to a cross-reference to Rule 7(b)(1).